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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: LOS ANGELES Date: DEC 05 2008  
MSC 02 245 62586

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the  
Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat.  
2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat.  
2763 (2000).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** On March 11, 2006, the District Director, Los Angeles, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the application, finding that the applicant did not establish, by a preponderance of the evidence, that she entered the United States before January 1, 1982. The director, citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (BIA 1989), concluded that only applicants who establish their entry to the United States prior to January 1, 1982, with conclusive documentation, can then uphold their burden of proof to establish continuous unlawful presence through May 4, 1988, with affidavits alone. In a February 8, 2006, Notice of Intent to Deny (NOID), the director noted that the applicant stated during her interview and signed a sworn statement attesting that she came to the United States for the first time in February 1982. The director also found that the applicant was ineligible for adjustment of status under the LIFE Act because she was likely to become a public charge as defined in 8 C.F.R. 245a.18(c)(2)(vi). The director concluded that the applicant had received welfare for many years and had been employed for cash.

In response to the NOID, the applicant asserted that she entered the United States in February 1981 and incorrectly said February 1982 during the interview. She also explained that she had never received public benefits on her own behalf, but only on behalf of her U.S. citizen son. She submitted a note from the Department of Public Social Services in Los Angeles asserting that she was receiving public benefits on behalf of her child only and that she was not receiving aid because she an ineligible non-citizen/resident. She also submitted a Form I-864, Affidavit of Support, with supporting documents, signed by her U.S. citizen sister. On appeal, the applicant asserts that she cannot establish her initial date of entry with documentation because she entered without inspection through Mexico. The applicant asserts that she has continuously resided in the United States for the requisite period. She submits various updated affidavits in support of her assertion.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm.

1989). In evaluating the evidence, *Matter of E-M-* also states that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case the applicant applied for such class membership by submitting a “Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit],” accompanied by a Form I-687 “Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act),” dated February 10, 1990.

On May 30, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On February 3, 2006, the applicant appeared for an interview based on the application.

The first issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden of establishing by a preponderance of the evidence, that her claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has met this burden.

The applicant has provided the following evidence relating to the requisite period:

- An envelope with a return address in Guatemala addressed to the applicant in Los Angeles, California, date-stamped on an illegible day in 1986;
- A receipt dated February 10, 1988, from the Los Angeles County Public Health Programs;
- A notarized affidavit dated December 29, 1989, from [REDACTED]. Ms. [REDACTED] states that the applicant resided at her home from February 1981, through July 1984, taking care of her children and home in exchange for room and board;
- A notarized affidavit dated October 23, 2001, from [REDACTED], stating that the applicant worked for her from 1981 to 1984 and that they continue to be friends;
- An updated, notarized affidavit dated March 25, 2006, from [REDACTED] Ms. [REDACTED] states that she has known the applicant since 1981. She states that she first met the applicant through the applicant's sister, [REDACTED] in Los Angeles, California. She states that the applicant worked for her from February 1981 to November 1984, taking care of her home and children. Ms. [REDACTED] states that the applicant lived with the family during the week and returned to her sister's house at [REDACTED] Los Angeles, California, on the weekends. She states that this is the address she resided at when she first arrived in the United States. She states that the applicant stopped working for her in 1984, because her children were old enough to take care of themselves. She states that she and the applicant spend time together, speak on the telephone from time to time, and enjoy their friendship together;
- A notarized affidavit dated December 29, 1989, from [REDACTED] s. [REDACTED] states that she and the applicant were neighbors and have always maintained a good and close relationship. She states that she has personal knowledge that the applicant resided in Los Angeles, California, from July 1981 to the date the affidavit was written. She states that she has seen the applicant at least once a week during this time;

- An updated, notarized affidavit dated March 25, 2006, from [REDACTED], a U.S. citizen. [REDACTED] states that she has known the applicant since 1968, as they were neighbors in their native Guatemala. She states that the applicant immigrated to the United States in February 1981. She states that the applicant lived with her sister, [REDACTED] at [REDACTED] in Los Angeles, from February 1981, through November 1984. She states that she knows this for a fact, because when the applicant first entered, she went to visit her. She states that she knows that the applicant worked for her aunt [REDACTED] as a housekeeper from February 1981 to November 1984. She states that she has maintained constant communication with the applicant and that they visit each other often. She states that she can verify that the applicant has been constantly residing in the United States since February 1981;
- A notarized affidavit dated April 5, 2006, from [REDACTED], a U.S. citizen. Mr. [REDACTED] states that he has known the applicant since September of 1981 and that he first met the applicant through her aunt, [REDACTED], an employee of his company. [REDACTED] states that the applicant would pick up [REDACTED] from work and take her home. He states that sometimes the applicant would help his wife pick up their children from school and take them home. He states that they remain friends and maintain constant communication and help each other in times of need and despair;
- A notarized affidavit dated March 25, 2006, from [REDACTED], a U.S. citizen. [REDACTED] states that she met the applicant in 1981, while shopping in [REDACTED], located at [REDACTED] and [REDACTED] in Los Angeles. She states that they would see each other from time to time and would chat. They eventually became friends and visited each other's homes. She states that in 1992, the two moved to the same street and became neighbors. They were neighbors for 12 years, until the applicant purchased her own home in January 2004. She states that since she met the applicant, she has remained in constant contact with each other;
- A notarized affidavit from [REDACTED]. Mr. [REDACTED] states that the applicant came to the United States in February 1981, worked as a live-in housekeeper, and spent the weekends at his house, at [REDACTED] Los Angeles, California;
- A letter dated January 2, 1990, from [REDACTED] and [REDACTED], verifying the employment of the applicant during 1987, 1988, and, 1989. Mr. and Mrs. [REDACTED] state that the applicant worked for them on a daily basis and took over many of the details of maintenance and organization; and,

An updated letter dated January 15, 2002, from [REDACTED] stating that the applicant worked for her as a housekeeper since 1987. [REDACTED] states that the applicant worked as a housekeeper and child care giver for a family in Segundo, California from 1981 to 1987. She states that the applicant was recommended to her by her sister-in-law, who was a neighbor of the family.

The contemporaneous documents submitted by the applicant appear to be credible. In addition, the applicant's presence in the United States prior to January 1, 1982, and her continuous presence in the United States since that time, was documented by the affidavits she submitted. The affidavits include contact addresses and telephone numbers and are amenable to verification. The updated affidavits are all signed under penalty of perjury, and all of the affiants have asserted their willingness to personally verify the information provided. The specific, detailed information contained in these affidavits corroborates the information provided by the applicant in her statements and application forms, namely, her continuous presence and residence in the United States since February 1981. The fact that the applicant was able to obtain affidavits from the same affiants in the late 1980's and subsequently in 2002 and 2006, indicates her continuing relationship with them, and substantiates their claims of personal knowledge of the applicant's continuous residence and physical presence during the requisite period.

Regarding the applicant's inconsistent testimony about her initial date of entry into the United States, when confronted with the inconsistency, the applicant has explained that, because she is older, had been waiting for over 17 years for a resolution to her case, and was nervous about and unfamiliar with the adjustment interview process, she incorrectly replied that she initially entered the United States in February 1982. She meant to say February 1981, and corrected herself to the interviewing officer. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant has consistently asserted that she first entered the United States in February 1981 and has resided continuously here in an unlawful status since that date. She listed her initial entry date as February 1981 on her Form I-687, and certified under penalty of perjury that all the information in the form was true and correct. Several of the credible affidavits in the record also corroborate this information. Reviewing the applicant's explanation in the light most favorable to her, it is reasonable and logically consistent that the applicant was nervous during her interview and mistakenly said she entered in February 1982 when she meant February 1981, a fact she has otherwise asserted throughout the record. The director did not specifically address this explanation in the March 11, 2006, Notice of Decision. The AAO finds that the applicant has adequately explained the inconsistent testimony regarding her date of entry.

The director has not established that the information on the many supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on her Form

I-485 or her Form I-687 Application; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The director is incorrect in reaching the legal conclusion that, in order to rely on affidavits alone to establish continuous unlawful residence for the requisite period, the applicant must submit conclusive documentation of entry prior to January 1, 1982. In fact, the BIA in *Matter of E-M-* states that:

While it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, *the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility.*

*Id.* (Emphasis added).

As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. The applicant has done so. In the response to the NOID and again on appeal, the applicant submitted a plausible statement setting forth why she is unable to produce "any other evidence except affidavits of witnesses that knew me when I first came into the United States and are witnesses that I have resided continuously since February 1981." The applicant also explained that, unlike the applicant in *Matter of E-M-*, she entered the United States without inspection and cannot submit documentary proof of this entry. Finally, she has submitted several detailed, credible, and verifiable affidavits consistent with this information.

The second issue in this proceeding is whether the applicant is inadmissible to the United States and ineligible for adjustment of status under the LIFE Act because she is likely to become a public charge.

Section 212(a)(4) of the Immigration and Nationality Act provides that any alien who is likely to become a public charge is inadmissible to the United States. The Board of Immigration Appeals (BIA) found that the determination of whether one is likely to become a public charge is a prospective test that must take into account the totality of the circumstances. *Matter of A-*, 19 I. & N. Dec. 867(BIA 1988). The applicant is a healthy woman in her 50's. She has been gainfully employed as a housekeeper since she entered the United States. She continues to work as a housekeeper on a regular basis for several clients. She has never received public benefits for herself. In a statement submitted in response to the NOID, the applicant explains that her U.S.

citizen child only began collecting public benefits when she separated from the abusive father of her child. (See applicant's statement and the Order of Protection against the father of her child). She only intends for her child to collect public benefits while the Family Support Operation Office pursues a case against the father of her child to collect child support from him.

Taking into account the totality of the applicant's circumstances at the time of her application, the applicant has established that she is not likely to become a public charge. The fact that the applicant is a single mother whose qualified U.S. citizen child receives public benefits does not lead to the conclusion that she is likely to become a public charge if her status is adjusted to that of lawful permanent resident.

Therefore, based on the above, the applicant has established entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. She has also established that she is in all other ways eligible to adjust status. Given this, she is eligible for permanent resident status under Section 1104 of the LIFE Act. The appeal will be sustained.

ORDER:       The appeal is sustained. This decision constitutes a final notice of eligibility.