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**U.S. Citizenship
and Immigration
Services**

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date:

JUL 09 2008

MSC 02 186 63002

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she maintained continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that she has been residing in the United States since September 1981, has never been absent from the country for more than 60 days, and requests that her case be reconsidered.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1) as follows: “An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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 its amenability to verification. See 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 stated 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 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 regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

The applicant, a native of Colombia, filed her application for permanent resident status under the LIFE Act (Form I-485) on April 4, 2002.

In a Notice of Intent to Deny (NOID), issued on September 28, 2006, the director cited documentation in the record showing the applicant’s presence in the United States in 1985 and subsequent years, but indicated that the only evidence of the applicant’s presence in the United States before 1985 were a series of affidavits that were weak on substance, consistency, and credibility. The director noted that the applicant listed only one absence from the United States since January 1, 1982 on her applications for temporary resident status (Form I-687s) in 1988 and 1993 – specifically, a trip to Colombia from May 5 to June 9, 1987 – but indicated that she must have been absent in 1984 as well, since she acknowledged that her son was born in Colombia on August 25, 1984. Based on the evidence of record, the director concluded that the applicant most likely entered the United States for the first time in 1985. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant submitted a personal statement addressing the various evidentiary shortcomings cited by the director. She cited one piece of evidence dating before 1985 – a U.S. postal receipt addressed by her to a friend in Colombia in 1982 – as primary evidence of her residence in the United States at that time. The applicant also submitted four additional affidavits from acquaintances and 18 photographs, seven of which were date stamped in 1982 and the others of which had handwritten dates from 1981 to 1986. Lastly, the applicant stated that she traveled to Colombia on August 2, 1984 to bear her son, returning to the United States on September 8, 1984 – and acknowledged that she had not listed this absence from the United States on her Form I-687s in 1988 and 1993.

On November 16, 2006, the director issued a Notice of Decision denying the application. The director indicated that the photographs lacked probative value because they did not include

landmarks which definitively placed them in the United States, and that the new affidavits contained the same sorts of infirmities as the old affidavits. The director also discussed the applicant's alleged departure from the United States in August/September 1984 to have her baby in Colombia, but determined that the evidence was too contradictory to give credence to the story. The director concluded that the applicant had failed to overcome the grounds for denial as detailed in the NOID – *i.e.*, the record did not establish the applicant's entry into the United States before 1985.

On appeal the applicant reiterates her claim to have resided in the United States continuously since September 1981. The applicant states that she has no more documentation to submit, and requests that her case be reconsidered.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Upon review of the record and the director's analysis of the evidence, the AAO concurs with the director's determination that the applicant has failed to establish her continuous residence in the United States in an unlawful status during the entire period required for legalization under the LIFE Act. In particular, the evidence does not demonstrate the applicant's continuous residence in the United States before 1985.

Beyond the decision of the director, the AAO notes some additional shortcomings and inconsistencies in the evidence. For example, in her response to the NOID the applicant cited a U.S. postal receipt dated in 1982. The referenced document, which bears a postmark of April 19, 1982, identifies the applicant as the sender, to a recipient in Colombia, and identifies the applicant's address as [REDACTED] in Woodside, New York. This address contradicts the applicant's I-687s in 1988 and 1993, as well as the affidavits of [REDACTED] in 1989 and 2006, all of which identified the applicant's address in the years 1981-1984 as [REDACTED], in Woodside. The applicant has provided no explanation for these conflicting addresses.

As for the photographs submitted in response to the NOID, even if they were accepted as evidence of the applicant's presence in the United States at the particular times stamped or written on the backs of the photos, they would hardly demonstrate that the applicant resided continuously in the United States during the five year period from 1981 to 1986. The photographs are identified as having been taken in the years 1981, 1982, 1983, 1985, and 1986. There is a notable gap, however, from February 1983 to July 1985.

While the applicant claims she was living in the United States in 1984, traveled to Colombia on August 2 of that year to have her son, and returned to the United States on September 8, 1984, there is no documentary evidence of that trip as there is for the applicant's later trip to Colombia in 1987, for which she at least submitted evidence (in the form of a plane ticket) of her flight from the United States to Colombia in May of that year. Further clouding the issue, the record is unclear as to when the applicant's son came to the United States. In her interview for LIFE legalization, on March 4, 2004, the applicant indicated that she brought her son to the United States when she returned from her trip to Colombia on June 9, 1987. This testimony appears to conflict, however, with other documentation submitted by the applicant – specifically, a photocopy of her son's immunization record in the City of New York – which lists her son's first immunizations as having been administered on November 26, 2004. The applicant has provided no explanation for this evidentiary conflict.

Even if the AAO accepts the applicant's claim, *arguendo*, that she was living in the United States in 1984, returned to Colombia to have her son, and returned to the United States later that year, there is no evidence aside from her undocumented claim that she did so within 45 days, as required under 8 C.F.R. § 245a.15(c)(1) to maintain continuous unlawful residence in the United States. The applicant asserted in her response to the NOID that her trip lasted from August 2 to September 8, 1984 – a total of 37 days – but seems to blur that claim in her appeal by stating that she has never been absent from the United States for more than 60 days. The immunization record suggests that the applicant may not have returned with her son before November 1984, which would have far exceeded the 45-day maximum for a single absence prescribed in the regulation. An absence of such duration would interrupt an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons.¹

In view of the numerous evidentiary conflicts discussed above and in the director's decision, which undermine the overall credibility of the application, the AAO concludes that the applicant has failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.

¹ While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."