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FILE: [REDACTED]
MSC 02 173 63288

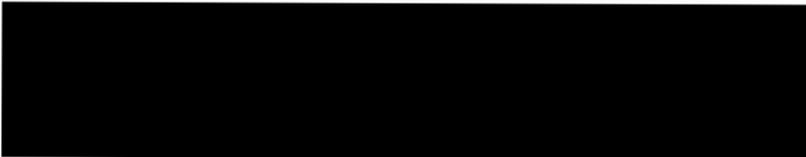
Office: NEW YORK

Date: JUL 11 2008

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982, through May 4, 1988. Counsel provides copies of previously submitted documentation in support of the appeal.

An applicant for permanent resident status 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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

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 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 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 or petitioner 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 or petition.

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 stated on a form to determine class membership, which she signed under penalty of perjury on January 4, 1993, that she first entered the United States on April 1, 1981, when she crossed the border without inspection. The applicant stated on her Form I-687, Application for Status as a Temporary Resident, that she lived at [REDACTED], in Woodside, New York throughout the qualifying period. She also stated that she worked as a babysitter for [REDACTED] in Woodside from June 1981 to November 1987 and at Winston Apparel Co., Ltd., in New York from February 1988. The applicant denied affiliation with any church, club or other organization during the qualifying period.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant submitted the following evidence:

1. A January 14, 1993, affidavit from [REDACTED] in which she stated that she had known the applicant since April 1981, and that she lived in Woodside, New York from April 1981 to October 1990. The affiant did not provide information regarding her relationship with the applicant, her initial acquaintance with the applicant, or the basis of her knowledge regarding the applicant's residency in the United States.
2. A March 16, 1991, affidavit from [REDACTED] in which she stated that she had known the applicant since April 1981, and that she lived in Woodside, New York from April 1981 to October 1990. The affiant did not provide information regarding her relationship with the applicant, her initial acquaintance with the applicant, or the basis of her knowledge regarding the applicant's residency in the United States.
3. A March 2, 1991, affidavit from [REDACTED], in which she stated that she had known the applicant since April 1981, and that she lived in Woodside, New York from April 1981 to October 1990. The affiant did not provide information regarding her relationship with the applicant, her initial acquaintance with the applicant, or the basis of her knowledge regarding the applicant's residency in the United States.
4. A February 28, 1991, sworn letter from [REDACTED] the applicant's husband, in which he certified that the applicant lived with him at [REDACTED] in Woodside, New York, from April 1981 to October 1990. The applicant submitted no documentation to confirm that she resided at the stated location during the relevant time frame.
5. A February 28, 1991, sworn statement from [REDACTED] in which she stated that the applicant worked for her as a babysitter from June 1981 to November 1987.
6. A March 27, 2004, sworn statement from [REDACTED], in which he stated that he met the applicant in 1981 at a social gathering, and that from 1981 to 1984, they lived in the same apartment.
7. A May 6, 2004, sworn statement from [REDACTED], in which he certified that he met the applicant at a social event in 1981, and that the applicant's husband is his good and old friend.

8. A January 13, 1993, letter from St. Bartholomew's Rectory in Elmhurst, New Jersey, signed by Reverend [REDACTED] in which he testified that the applicant had worshipped at the church since 1981. Reverend [REDACTED] did not indicate his position with the church or his authority for providing the information on behalf of the church. In addition, the letter does not indicate the source of the information contained in the letter and does not indicate the applicant's address at the time of her attendance in the church, as required by 8 C.F.R. § 245a.2(d)(3)(v).
9. A March 24, 2004, letter from Our Lady of Sorrows Church in Corona, New York, signed by [REDACTED], pastor. [REDACTED] stated that the applicant had been coming to the church for years, and that she had been "a registered parishioner and has been associated with this church since the early 1981's [sic]. The letter does not indicate the source of the information contained in the letter and does not indicate the applicant's address at the time of her attendance in the church, as required by 8 C.F.R. § 245a.2(d)(3)(v).
10. A January 24, 2001, sworn letter from [REDACTED] in which he certified that he had known the applicant since 1981. Mr. [REDACTED] did not provide information regarding his relationship with the applicant, his initial acquaintance with her, or the basis of his knowledge regarding the applicant's residency in the United States.
11. A May 6, 2004, sworn statement from [REDACTED] in which he certified that he had known the applicant since 1985, when he met her at a social event. Mr. [REDACTED] stated that the applicant was the wife of his "good and old friend."
12. A March 12, 1991, letter from Winston Apparel Co., Ltd, signed by [REDACTED] as president. The letter verified that the applicant had worked for the company as a machine operator since February 1988. The letter did not provide the applicant's address during her employment, or whether the information about the applicant's employment was taken from company records, as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant also submitted nine envelopes addressed to her in the United States and bearing canceled postmarks within the qualifying period. However, according to the 2006 Scott Standard Postage Stamp Catalogue, three of the stamps were issued after the dates that appear in the postmarks.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The director denied the application because the applicant indicated on her Form I-485, Application to Register Permanent Resident or Adjust Status, that she had a child born in Ecuador on April 7, 1985, and had not revealed an absence from the United States during this period. The director, therefore, determined that the applicant's testimony was not credible and denied the application.

On appeal, the applicant states that her daughter's birthday was typed incorrectly on the Form I-485 application, and submits a copy of her daughter's birth certificate showing that the child was born in Ecuador on January 7, 1981. This date is consistent with the date that the applicant listed on her Form I-

687 application. The applicant has submitted competent objective evidence to overcome this inconsistency in the record.

However, the applicant failed to submit documentation to overcome other inconsistencies in the record. For example, on her Form I-687 application, the applicant denied any association with a church. However, she submitted a letter signed by Reverend [REDACTED], indicating that she had attended church at St. Bartholomew's Rectory in Elmhurst, New Jersey beginning in 1981. The applicant also submitted a letter from Monsignor [REDACTED], stating that she had attended church at Our Lady of Sorrows Church in Corona, New York and had been a registered member of the parish since 1981. Neither of the letters meets the requirements of 8 C.F.R. § 245a.2(d)(3)(v).

Further, as the applicant submitted envelopes bearing fraudulent postal marks, her credibility and that of other supporting documentation, particularly the other envelopes, are suspect. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon fraudulent documents and other documents with little or no probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish 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. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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