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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

[REDACTED]

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FILE:

[REDACTED]

Office: NEW YORK

Date:

**JUN 30 2008**

[REDACTED]  
consolidated herein]

[REDACTED]

MSC 02 141 68436

IN RE: Applicant:

[REDACTED]

APPLICATION:

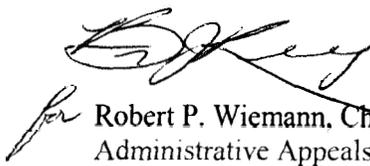
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director improperly analyzed the evidence of record, and requests that the case be reconsidered.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their 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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 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 Brazil who claims to have lived in the United States since April 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on February 18, 2002, and was subsequently interviewed on April 1, 2004. At that time the record included the following documentary evidence, in photocopy, of the applicant’s residence in the United States during the 1980s:

A notarized statement by [REDACTED], dated August 14, 1991, that the applicant was a tenant in his building at [REDACTED] in Astoria, New York, from December 1985 to June 1989, and was paid \$200/week for housekeeping services rendered to him.

A notarized statement by [REDACTED], residing at [REDACTED] in Astoria, dated July 8, 2000, that she has known the applicant since 1981, that they were housemates during that year, and that the applicant occasionally helped in taking care of her son.

- A notarized statement by [REDACTED], dated July 28, 2000, that she has known the applicant since 1981 and that they worked together in the same household.

- A statement by [REDACTED] a resident of New York City, dated January 20, 2002, that the applicant has worked for her intermittently since 1988.
- An undated statement by [REDACTED] that he has known the applicant since 1981 and has employed her in his business – Greenhouse Agency, Inc. – at 15 East 40<sup>th</sup> Street in New York City.
- A receipt from the New York University College of Dentistry, Periodontic Clinic – D.D.S. Program, identifying the applicant as the patient for services rendered on September 5, 1983.
- Airline travel documents, including (1) a ticket and boarding pass from Aerolineas Argentinas, which identifies the applicant as the passenger but does not identify the year of service, and (2) a boarding pass from Eastern Airlines, which identifies the passenger as [REDACTED] and likewise does not identify the year of service.
- A series of greeting cards, notes, and envelopes with dates and postmarks ranging from 1981 to 1987 (as well as some from the 1990s).

On June 19, 2006, the director issued a Notice of Intent to Deny (NOID), citing some inconsistencies between the applicant's testimony at her interview for LIFE legalization and the documentation on file, and indicating that there was no evidence of the applicant's entry into the United States before January 23, 1989, the date of a passport stamp confirming her entry on a B-1/B-2 visa. The applicant was granted 30 days to submit additional evidence.

In response to the NOID counsel offered explanations for the various evidentiary inconsistencies cited by the director and asserted that the applicant entered the United States on a tourist visa in April 1981 – before the requisite date of January 1, 1982 for LIFE legalization.

On October 11, 2006, the director issued a Notice of Decision denying the application. The director noted that the applicant did not address the issue of her passport, which appeared to include an erased admission date and did not contain any evidence of an entry into the United States before January 23, 1989 – a date which accorded with written information provided by the applicant in 1999 that she had been in the United States for ten years. The director concluded that the applicant failed to establish that she had resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, counsel contends that director's denial was based on hearsay evidence and unfounded allegations. According to counsel, the director should have subjected the photocopied passport page showing an "erased" entry date to forensic investigation, and should have ignored the

information provided by the applicant about first entering the United States in 1989 since it was provided at an interview years later, the only recordation of which are the unvalidated notes of the interviewing officer.

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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. After reviewing all of the documentation of record, the AAO determines that the applicant has failed to demonstrate her continuous unlawful residence during the requisite period for legalization under the LIFE Act.

The notarized statement from [REDACTED] in August 1991, stating that the applicant was a tenant in his building on [REDACTED] in Astoria, New York, from December 1985 to June 1989, conflicts with the information the applicant provided to the Miami District Office at virtually the same time, September 1991, in an application for temporary resident status (Form I-687). In that document the applicant listed the following residential addresses in the United States during the 1980s:

1. April 1981 – February 1983: [REDACTED], in New York City.
2. April 1983 – August 1986: [REDACTED], in Astoria, New York.
3. September 1986 – February 1988: [REDACTED] in Great Neck, New York.
4. April 1988 – November 1988: [REDACTED], Pompano Beach, Florida.
5. January 1989 – September 1991: [REDACTED] Deerfield, Florida.

The address identified by [REDACTED] from December 1985 to June 1989 does not match any of the three addresses listed by the applicant in her Form I-687 for that time period, or any other address listed by the applicant between 1981 and 1991.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The applicant has provided no explanation for the evidentiary inconsistency discussed above, nor submitted any additional documentation identifying her addresses in the United States, if any, during the 1980s.

The notarized statements from [REDACTED] and [REDACTED] in July 2000, who assert that they met the applicant in 1981, provided very little information about the applicant's life in the United States and their interaction with her over the years. Neither indicated where the applicant lived in 1981 and succeeding years, or where she worked. Moreover, the statements were not supplemented by any documentary evidence of the authors' personal relationship with the applicant – such as photographs, letters, and the like – nor any documentation from either author of her own identity and presence in the United States during the 1980s. The AAO concludes, therefore, that the statements from [REDACTED] and [REDACTED] have little evidentiary weight.

As for the statements from [REDACTED] and [REDACTED] indicating that they employed the applicant, neither comports with the regulatory requirements for employment letters set forth in 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address at the time of employment, did not identify the exact period of employment, did not indicate the applicant's duties, did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. Due to the infirmities discussed above, the employment letters have little probative value.

The receipt from the NYU Periodontic Clinic for dental services, which bears a handwritten date of September 5, 1983, contains no date stamp or other authenticating mark on the document. A note on the bottom of the document reads: "This is a receipt only if Validated by Cashier." It is unclear on the face of the document whether it was validated by the cashier. Moreover, while the applicant is identified as the patient, no address in the United States is indicated on the document. For the reasons discussed above, the dental receipt is not persuasive evidence that the applicant was a resident of the United States in September 1983.

The airline ticket/boarding cards from Aerolineas Argentinas and Eastern Airlines have no probative value since they do not indicate the year(s) of service, do not identify any address for the applicant, and in the case of Eastern Airlines does not identify the applicant as the passenger.

Likewise, the photocopied greeting cards, notes, and envelopes submitted by the applicant have almost no probative value. Most of the greeting cards and notes do not have an identifiable addressee, and the only postmarked envelopes with legible addresses and postmarks date from the 1990s. Accordingly, none of these materials represents credible evidence that the applicant was resident in the United States before 1989.

Based on the foregoing analysis – detailing the lack of probative evidence and the inconsistencies in the record – 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. Therefore, 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.