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U.S. Citizenship
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Services

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[REDACTED]

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FILE:

[REDACTED]

Office: EL PASO

Date:

MAR 05 2008

MSC 02 107 60427

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

Robert P. Wiemafin, 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, El Paso, and is now before the Administrative Appeals Office 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 since before January 1, 1982 through May 4, 1988. Specifically, the director determined that the applicant had failed to submit original documents and information pertaining to a prior arrest in response to the director's specific requests.

On appeal, counsel states that the applicant submitted substantial documentary evidence and specifically complied with the director's requests, and therefore the applicant has met her burden of proof.

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).

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the affidavit for class membership, which she signed under penalty of perjury on March 28, 1990, the applicant stated that she first arrived in the United States in October 25, 1981, when she crossed the border without inspection. On her Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on March 28, 1990, the applicant claimed to have lived at the following addresses in New Jersey during the requisite period:

November 1981 to April 1984:
May 1984 to April 1986:
May 1986 to Present:



The applicant also claimed under section 36 of this form that she was employed by the following entities during this period:

November 1981 to April 1984:
May 1984 to August 1986:
October 1987 to Present:



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

- (1) Affidavit dated May 3, 1990 from [redacted], claiming that she has known the applicant since November 1981 and that she is a good friend. She also corroborates the addresses the applicant claimed to live at on Form I-687.

- (2) Affidavit dated May 3, 1990 from [REDACTED], claiming that she has known the applicant since November 1981 and that she is a good friend and an excellent neighbor. She also corroborates the addresses the applicant claimed to live at on Form I-687.
- (3) Affidavit dated May 3, 1990 from [REDACTED], claiming that she has known the applicant since November 1981 and that she lived with her at [REDACTED]. She also corroborates the addresses the applicant claimed to live at on Form I-687.
- (4) Affidavit dated May 3, 1990 from [REDACTED], claiming that she has known the applicant since November 1981 and that she worked with the applicant at [REDACTED]. She also corroborates the addresses the applicant claimed to live at on Form I-687.
- (5) Affidavit dated April 20, 1990 from [REDACTED], claiming that he has known the applicant since November 1981 and that she is a "very nice person, nice lady." He also corroborates the addresses the applicant claimed to live at on Form I-687.
- (6) Affidavit dated April 20, 1990 from [REDACTED], claiming that he has known the applicant since November 1981 and that she is a "very nice person." He also corroborates the addresses the applicant claimed to live at on Form I-687.
- (7) Affidavit dated April 20, 1990 from [REDACTED], claiming that he has known the applicant since December 1981 and that she is his very good friend. He also corroborates the addresses the applicant claimed to live at on Form I-687 with some discrepancies with the dates of residence.
- (8) Affidavit dated April 20, 1990 from [REDACTED], claiming that he has known the applicant since November 1981 and that she is a "very good friend." He also corroborates the addresses the applicant claimed to live at on Form I-687.
- (9) Affidavit dated April 20, 1990 from [REDACTED], claiming that she has known the applicant since November 1981 and that she is a very good friend. She also corroborates the addresses the applicant claimed to live at on Form I-687.
- (10) Affidavit dated June 28, 1990 from [REDACTED], claiming that he has known the applicant since 1981 and that she was living in his apartment in Linden in 1982.
- (11) Affidavit dated April 20, 1990 from [REDACTED] claiming that the applicant lived with him at [REDACTED] from May 1984 to April 1986. He also claimed to still reside at this address as of the date the affidavit was executed.
- (12) Affidavit dated April 20, 1990 from [REDACTED], claiming that the applicant babysat her sons from November 1981 to April 1984. She did not provide any contact information.
- (13) Letter dated April 30, 1990 by [REDACTED] claiming that the applicant was employed by [REDACTED] from May 1984 to August 1986.
- (14) Letter dated May 15, 1990 by [REDACTED], claiming that the applicant was employed by [REDACTED] from October 1987 to present.

- (15) Letter from [REDACTED], based in Elizabeth, New Jersey, claiming that the applicant has been under his professional care since 1985.
- (16) Rent receipts for her room in Roselle Park dated September 1982, October 1982 and May 1984.
- (17) Rent receipts for her room in Linden dated January 1982, March 1983, June 1983, and July 1983.
- (18) Standard Lumber Receipt dated April 2, 1983 for the purchase of various home goods.
- (19) Letter dated December 12, 1982 from R [REDACTED] enclosing a copy of a bill for medical services rendered on May 12, 1982.

The applicant also submitted several documents regarding her arrest history, including Motions to Dismiss two of the charges as well as a sentencing record for another.

The director found the evidence submitted insufficient, and in a notice of intent to deny (NOID), issued on August 10, 2004, the director requested the applicant submitted originals of the various affidavits and letters submitted in support of the record, in addition to more detailed information regarding her arrest for possession of marijuana. The NOID, mailed to the applicant's last known address, was returned as undeliverable and the director consequently denied the application on November 8, 2004.

On appeal, counsel for the applicant argues that in response to several requests for evidence issued by the interviewing officers prior to the NOID, the applicant had submitted the requested evidence. Counsel claimed that the details regarding the applicant's charge of possession of marijuana had been addressed, and further asserted that the applicant was unable to produce the originals of the documents provided because they were contained in her "A" file. Counsel concluded by claiming that the evidence contained in the record was sufficient to satisfy her burden of proof in these proceedings.

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 quality 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The AAO notes that, upon review of the documentation submitted on appeal and in response to the interviewing officers' requests for evidence, the applicant did submit documentation addressing the amount of marijuana she was in possession of when charged on November 14, 2000. However, it does appear that the applicant failed to produce original documents as requested by the director in the NOID. While the evidence contained in the record is certainly sufficient for purposes of AAO review, it is questionable why the applicant was unable to produce the originals of said documents. The applicant, through counsel, contends that all documents are contained in her "A" file. However, the director was and the AAO currently is in possession of her "A" file and no original documents are contained therein. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Regardless, the applicant has not met her burden in these proceedings. The *Matter of E-- M*—decision provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. In this case, the applicant claims to have entered the United States in October 1981 without inspection. Therefore, there is no Form I-94 or admission stamp in a passport corroborating applicant's date of entry.

The applicant instead attempts to prove her entry and continuous presence by submitting a series of affidavits from persons who were acquainted with her during this period. While the applicant submits an abundance of documents, the content of these affidavits is sparse and provides little probative information.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The affidavits submitted in support of this application fall far short of meeting the above criteria. Most of the affidavits are identical, in that they list the applicant's three claimed residences in New Jersey from November 1981 to "present," and claim that she is a very good person. Most of the affiants omit any information pertaining to the nature of their acquaintance, the frequency of their contact during this period, or the origin of the information being attested to.

It is further noted that most of these affidavits, aside from being identical, overlook the fact that the applicant allegedly lived in New York in 1987, the same period in which they all claim she resided in Linden, New Jersey. On appeal, applicant submits a copy of her daughter's birth certificate, showing that she was born in Queens, New York at the Flushing Hospital and Medical Center on February 5, 1987. The applicant lists her home address on the birth certificate as [REDACTED] New York, New York 10021. The applicant also claimed in her interview with the district office that she resided in New York for approximately one year. It is questionable, therefore, as to why none of the affiants note the applicant's residence in New York in 1987. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The applicant provided a affidavit from [REDACTED], his alleged employer as of November 1981, in support of the contention that he entered the United States prior to January 1, 1982. The affidavit submitted in support of this claim, however, does not meet the regulatory requirements. Specifically, in lieu of an employment letter, CIS will accept an affidavit form-letter stating that the alien's employment records are unavailable and why they are unavailable, as well as the employer's willingness to come forward and give testimony as requested. *See* 8 C.F.R. § 245.a2(d)(3)(i)(F). The affidavit of [REDACTED] does not state this information.

Additionally, the affidavit from [REDACTED], sister of the applicant, further contradicts the applicant's claimed entry into the United States in October 1981, since she claims that she resided with her from February 1981 until 1992 at [REDACTED]. Not only does this statement contradict the applicant's claimed date of first entry, it further contradicts the applicant's claimed address during this period. 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 relies as well on employments from her three claimed employers during the relevant period. These letters, however, do not meet the required evidentiary standards. For example, the letter from letter

from [REDACTED], who claims that the applicant babysat her sons from November 1981 to April 1984 provides no additional details, such as where she worked or the duties of her position. More importantly, however, the applicant did not provide any contact information, such as her telephone number or her current address at which CIS could contact her to verify her statements.

Furthermore, the two other employment letters likewise fail to satisfy the regulatory requirements. Although written on employer letterhead, both letters from [REDACTED] of [REDACTED] and [REDACTED] of [REDACTED] lack most of the necessary information required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letters omit whether or not the information in the letters was obtained from official company records or the location of company records and whether CIS could have access to those records. Furthermore, they omit the applicant's specific duties with the companies and any periods of layoff.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although numerous affidavits of acquaintance have been submitted, there are unresolved inconsistencies contained therein which the applicant failed to clarify. These inconsistencies would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. However, the affiants fail to specifically articulate the origin of the information to which they attest or the basis for their acquaintance with the applicant. The brief and somewhat generic statements contained in both the affidavits and the letters of employment fail to conform to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3).

Given the absence of contemporaneous documentation and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that she continuously resided in the United States in an unlawful status since before January 1, 1982 through 1984. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

It is further noted that the record contains evidence showing that the applicant was arrested on two separate occasions in New York and Texas. Prior to adjudication, the director requested all arrest records and final court dispositions for each incident in a request for evidence dated January 22, 2004. The applicant submitted documentation demonstrating that on November 14, 2000, El Paso, Texas Police Department arrested the applicant for the charge of Possession of Marijuana Under Two Ounces, in violation of 481.115-P HS, a misdemeanor. The record shows that the applicant plead guilty and was fined, ordered to perform community service, and placed on community supervision for one year. (Cause No. [REDACTED]).

With regard to the New York arrest, the applicant submitted an arrest record showing that she was arrested by the New York Police Department on November 25, 1996. The record shows that she was placed under arrest for operating a motor vehicle under the influence of alcohol, and was charged with the following violations:

- (1) OP MV ILL % ALC, in violation of Section 119.20 (f)(2), a misdemeanor

- (2) OP MV INTOX 2ND, in violation of Section 119.20(f)(3), a misdemeanor

Although the director specifically requested the final court disposition with regard to these charges, the applicant failed to produce such evidence. Counsel for the applicant submits a report from the State of New York Unified Court System, Division of Administrative Services, indicating that while a criminal history search was conducted on behalf of the applicant, no records were found. However, this document fails to establish the outcome of the applicant's arrest on November 25, 1996.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B). The regulations provide relevant definitions at 8 C.F.R. § 245a.

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

Since the applicant failed to submit documentation pertaining to the final court disposition of the New York arrest and ensuing charges, the applicant's actual number of misdemeanor convictions cannot be determined. If she was in fact convicted of both counts, she would be an ineligible alien under 8 C.F.R. § 245a.3(c). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14). For this additional reason, the application is denied.

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