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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

L2

[Redacted]

FILE: [Redacted]  
MSC 02 269 60835

Office: HOUSTON

Date:

MAR 06 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:

[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. 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, Houston, 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 sufficient evidence to establish her presence in the United States prior to October 7, 1984.

On appeal, counsel states that the applicant submitted substantial documentary evidence including letters and affidavits from former employers and friends. He asserts that the applicant has met her burden of proof and has established her eligibility for permanent resident status under the LIFE Act by a preponderance of evidence.

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).

The AAO concurs with the director's finding that the applicant submitted sufficient evidence to establish continuous residence and physical presence in the United States subsequent to October 7, 1984. Specifically, the record contains copies of leases, pay stubs, tax records, utility bills, and school records for the applicant's son during the period from October 7, 1984 through May 4, 1988. Therefore, the issue on appeal is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States from before January 1, 1982 through 1984.

In the affidavit for class membership, which she signed under penalty of perjury on January 30, 1993, the applicant stated that she first arrived in the United States in June 1979, 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, the applicant claimed to live at the following addresses in Houston, Texas during the relevant period:

July 1979 to August 1981:

September 1981 to September 1984:

She further claimed to be employed by

in Houston as a Countergirl from August 1979 to September 1984.

In an attempt to establish continuous unlawful residence since before January 1982 through 1984, the applicant furnished the following evidence:

- (1) Affidavit of facts dated May 15, 1995 from [REDACTED] claiming the applicant and her family were patients of his since 1981 and that they worked in the Dry Cleaning establishment across the street from his office. No additional documentation, such as medical records, was provided.
- (2) Affidavit dated January 22, 1992 by [REDACTED] claiming that the applicant lived with "us" from July 1979 to August 1981 at [REDACTED] and moved with them to [REDACTED] and resided with them there until September 1984. The affiant indicates that he was 26 years old on the date the affidavit was executed.
- (3) Employment letter from [REDACTED] dated January 16, 1990, executed by the owner (name illegible), who claimed that the applicant worked for the company as a counter girl/seamstress from August 1979 to September 1983.

On April 17, 2005, CIS issued a Notice of Intent to Deny the application. The district director noted that the record did not contain credible and verifiable evidence that the applicant continually resided in the United States since before January 1, 1982 through 1984. The director noted that her claim of illegal entry in 1979 was not supported by credible evidence, and afforded the applicant the opportunity to submit additional evidence in support of her claims.

In response, counsel for the applicant submitted a letter dated May 17, 2005, alleging that the affidavits and letters previously submitted clearly established that the applicant had continually resided in the United States since before January 1, 1982 through May 4, 1988. No new evidence was submitted.

The director denied the application on June 7, 2005, noting that while the evidence in the record supported a finding that the applicant was present in the United States subsequent to 1984, there was insufficient evidence to show that she unlawfully entered the United States as claimed in June 1979 and continuously resided therein in an unlawful status through 1984. The director noted specifically the applicant's statements in her March 4, 2005 interview, and focused on her inability to recall the last name of the person she claimed to reside with from 1979 to 1984, and further noted that the applicant's failure to recall the address of her employer during this five-year period raised doubts with regard to the credibility of all evidence submitted.

On appeal, counsel for the applicant submits a two-page letter that is virtually identical to the response to the NOID. The letter on appeal contains an additional assertion which claims that the interviewing officer unfairly refused to allow the applicant to clarify her answers and thus the application was incorrectly denied. No additional evidence was submitted.

Upon review, the AAO concurs with the director's decision.

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.

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. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

Although the applicant claims that she entered the United States in June 1979, she likewise claims that she entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. The applicant provided an affidavit by [REDACTED] who claimed that the applicant lived with him from 1979 to 1984 at two different addresses. However, there are some questionable issues with regard to this affidavit. First, [REDACTED] claims that at the time of the execution of the affidavit, he was 26 years old. Therefore, he would have been only 13 years old at the time the applicant resided with him. In her interview, she claimed to live with a person named [REDACTED], yet provided no additional details or evidence to support the claim. The fact that [REDACTED] was merely 13 years old in 1979 raises serious questions with regard to the validity of the claim.

The applicant also provides an affidavit from [REDACTED], who claimed that the applicant and her family were patients of his since 1981. However, [REDACTED] provides no additional information, such as medical records, to support his claim. Furthermore, the applicant claims that her children did not enter the United States until 1984, thereby raising questions regarding [REDACTED]’s claim that he treated her family as early as 1981. 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 inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although affidavits of acquaintances have been submitted, the unresolved inconsistencies noted above have not been clarified by the applicant. 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.

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 of both [REDACTED] and [REDACTED] submitted in support of this application fall far short of meeting the above criteria. [REDACTED]'s affidavit does not provide any contact information and fails to set forth the basis of his acquaintance with the applicant. [REDACTED] affidavit does not provide the applicant's dates and places of residence to which he can personally attest, and fails to provide the origin of the information being attested to. This is particularly questionable, since he claims to be the family's doctor yet offers no medical records in support of this claim. 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. at 591.

In further support of the application, the applicant submits an affidavit from the owner of [REDACTED] which claims that the applicant worked for the company from August 1979 to September 1983. 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. § 245a.2(d)(3)(i)(F). The affidavit of the owner does not state this information. Furthermore, it omits critical information such as any periods of layoff. Most importantly, however, is the fact that the owner claims the applicant's employment ended in September 1983, when the applicant claims on Form I-687 that she worked there until September 1984. As previously stated, 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. at 591-92.

Finally, it is noted that the file contains a document entitled "[REDACTED]" which contains information regarding the applicant's residence in the United States. The form states that the applicant's unlawful residence commenced in January 1981, not June 1979 as claimed. While this document is not executed under oath and not afforded great evidentiary weight in these proceedings, it nevertheless raises additional questions regarding the validity of the applicant's claims. Once again, 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. at 591.

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 he 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.

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