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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

MSC 02 208 61021

Office: NEW YORK

Date: **MAR 19 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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. Wieman, 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that she entered the United States before January 1, 1982, and that she resided continuously in the United States in an unlawful status since such date through May 4, 1988. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

On appeal, counsel asserts that the director erred in denying the instant application for adjustment of status under the LIFE Act. Counsel contends that the applicant provided sufficient documentation, photographs, affidavits and testimony to prove her burden. Counsel submits a brief with additional evidence and copies of previously submitted evidence.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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.* at 80. 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 applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In support of the applicant's claim, the applicant submitted the following evidence:

1. A December 23, 1991, notarized declaration by [REDACTED] who stated that the applicant lived with her at [REDACTED] Flushing, New York, 11358, since December 1981 to the present. [REDACTED] stated that the rent receipts and household bills were in her name and that the applicant contributed towards payment of the rent and household bills.
2. A January 8, 1992, sworn affidavit by [REDACTED] who stated that she has personally known the applicant resided in Flushing, New York, since December 1981 to the present. She stated that they have been good friends for a long time. The affiant provided her address of residence.
3. A December 23, 1991, sworn affidavit by [REDACTED] who stated that she has personal knowledge that the applicant resided in Flushing, New York, from December 1981 to the present. [REDACTED] stated that she met the applicant at a church party. She provided her address of residence. The affiant failed to state an exact date of when she met the applicant.
4. A December 23, 1991, sworn affidavit by [REDACTED] who stated that he has personal knowledge that the applicant resided in Flushing, New York, from December 1981 to the present. He stated that he met the applicant a long time ago. He provided his address of residence. The affiant failed to state an exact date of when he met the applicant.
5. An undated, sworn affidavit by [REDACTED] who stated that to her personal knowledge the applicant has resided in Flushing, New York, from September 1988 to December 1993. She also stated that she met the applicant at a family reunion in June 1982. She further stated that the longest period in which she has not seen the applicant is seven months.
6. An undated, sworn affidavit by [REDACTED] who stated that to her personal knowledge the applicant has resided in Flushing, New York, from September 1988 to December 1993. Ms. [REDACTED] stated that she met the applicant at a birthday/family reunion in June 1982. She provided her address of residence.

7. An undated, sworn affidavit by [REDACTED] who stated that to his personal knowledge the applicant has resided in Flushing, New York, from September 1988 to December 1993. [REDACTED] stated that he met the applicant at a Christmas party in December 1984. He also provided his address of residence.

In the Notice of Intent to Deny (NOID), dated October 5, 2005, the director stated that the veracity of the applicant's claim was called into question due to discrepancies in the record. Specifically, the director noted that the applicant omitted an absence from the United States in 1983 when she gave birth to her daughter in Mexico. The director also noted that several of the affiants' statements were inconsistent with each other as well as the applicant's statements during her interview regarding the applicant's residences during the statutory period. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence.

In response to the NOID, the applicant, through counsel, submitted her own notarized affidavit in an attempt to reconcile the discrepancies, as well as additional evidence. In the Notice of Decision (NOD), dated February 22, 2006, the director determined that applicant failed to overcome the reasons for denial stated in the NOID.

Absences

During her March 11, 2004, interview, the applicant stated that she first entered the United States on December 23, 1981. She stated that she made one brief trip to Mexico in 1985 during the statutory period. The director doubted the veracity of her claim as the record indicated that she gave birth to a daughter in Mexico in 1983. In a November 1, 2005, sworn affidavit, the applicant stated that she that during her interview she unintentionally forgot some other trips. The applicant listed a total of five brief absences from the United States in 1982, 1983 (two trips), 1985 and 1988. The applicant submitted photocopies of two of her Mexican passports, issued on December 5, 1985, and August 25, 1988. On page 31 of the 1985 passport, the applicant was issued a U.S. visa date-stamped in December 1985. On page 7 of the 1988 passport, the applicant was admitted into the United States on September 27, 1988.

The applicant also submitted a translation of an October 25, 2005, notarized letter by [REDACTED], brother of the applicant. [REDACTED] stated that the applicant was in Mexico City from August 27, 1982, until she returned to New York on September 9, 1982. He also stated that the applicant came to Mexico on May 15, 1983 and gave birth to a baby girl on June 5, 1983. Mr. [REDACTED] stated that the applicant left Mexico on June 23, 1983. He further stated that the applicant returned to Mexico on July 29, 1983 until August 9, 1983. He asserted that he cared for his niece until December 23, 1985, when the applicant took the child to New York.

While the above evidence appears to confirm the five absences listed by the applicant, the applicant's credibility continues to be questionable as there are further discrepancies in the record. The record contains a photocopy of the applicant's birth certificate issued in Mexico on July 30,

1987. The director noted that the applicant did not disclose any absence from the United States in July 1987. The applicant asserts that the document was obtained by proxy, but she did not submit any independent objective evidence to prove of her claim.

It is also noted while the applicant stated she first entered the United States on December 23, 1981, her statement is inconsistent with her Form I-485, Application to Register Permanent Resident or Adjust Status, dated April 26, 2002. In Part 1, when asked to list her date of last arrival, the applicant stated July 1981. There is no independent objective evidence to reconcile this discrepancy.

The record contains a photocopy of two receipts, dated in January 1986. Although the receipts contain the applicant's name, two receipts in January 1986 do not establish the applicant's continuous residence in the United States during the statutory period.

The record also contains a photocopy of a retail installment contract, which indicated the applicant was the co-buyer, dated on February 16, 1988. The contract does not establish the applicant's continuous residence in the United States during the statutory period.

The record also contains photocopies of photographs of the applicant or the applicant's child with the dates printed below (February 1983, December 1985, January 1987). However, these photographs are not verifiable with regard to date and, in some cases, location. The photographs do not establish the applicant's continuous residence in the United States during the statutory period.

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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

From the applicant's Form I-485 application to her appeal, there have been discrepancies between the applicant's statements and the record. While the applicant attempted to resolve these discrepancies, the applicant has failed to do so. The applicant's passports provide evidence of her entry to the United States in 1985 and 1988, but there is no independent objective evidence to determine the length of her absences or the number of absences during the statutory period. The affidavit by the applicant's brother is unverifiable and provides minimal probative value.

Addresses of Residence

During her interview, the applicant claimed residence at [REDACTED], Flushing, New York. The applicant made no mention of living with [REDACTED], who stated that she lived with the applicant at [REDACTED] Flushing, New York, 11358, since December 1981 to the present. The affiant stated that the rent receipts and household bills were in her name and that the applicant contributed towards payment of the rent and household bills. In her own affidavit, the applicant apologizes for not previously mentioning this fact and corrects the end date to December 1984. The applicant's

omission regarding her address of residence calls into question the reliability of the applicant's statements.

The record contains three affidavits by affiants [REDACTED] and [REDACTED]. All three affiants stated that the applicant resided in Flushing, New York, from December 1981 to the present. The applicant stated that she could not submit any more information from these affiants because she was unable to locate [REDACTED] and [REDACTED] and [REDACTED] died on April 15, 1993. While the applicant asserts that all the affiants confirmed her presence in the United States during the requisite period, the absence of detailed information brings into question the credibility of the affiants. In addition, none of the affiants provided any supporting documentation regarding their identity or presence in the United States during the statutory period.

The record also contains three affidavits by [REDACTED] and [REDACTED]. All three affiants stated that the applicant resided at addresses in Corona and Woodside during the statutory period. The director noted that this was inconsistent with the previous three affiants who stated the applicant resided in Flushing. On appeal, counsel submitted a March 14, 2006, letter by [REDACTED] customer service supervisor of the U.S. Postal Service, Flushing Main Post Office. [REDACTED] stated that any address that falls inside the 11300 through 11399 zip-codes is part of the Flushing district of the United States Postal Service. Based on the evidence provided, it is concluded that Corona and Woodside falls within the Flushing district.

The applicant also submitted an updated letter by [REDACTED] lo, dated November 1, 2005. Ms. Cuello stated that she has known the applicant since June 1982. [REDACTED] stated that she met the applicant and her family through her neighbor and they became friends. [REDACTED] provided her address of residence. She also confirmed the applicant's addresses of residence from December 1981 to 1991. Although not required, [REDACTED] failed to include any supporting documentation of her identity or presence in the United States. In addition, the affiant failed to indicate how she possessed first-hand knowledge of the applicant's residence in the United States in December 1981 when she did not meet the applicant until June 1982. This discrepancy casts doubt on the credibility of the affiant.

The applicant also submitted a notarized letter by [REDACTED] dated October 28, 2005. Ms. [REDACTED] stated that she was the wife of affiant [REDACTED]. She stated that her husband could not testify at this time due to his health condition. [REDACTED] stated that she and her husband have known the applicant since the early 1980s. [REDACTED] provided her telephone number. Although not required, neither [REDACTED] nor [REDACTED] included any supporting documentation of their identities or presence in the United States. [REDACTED] failed to specify an exact date and, therefore, her affidavit provided minimal probative value.

Finally, the record contains a sworn affidavit by [REDACTED], dated November 2, 2005. Ms. [REDACTED] stated that she was born in Mexico City on June 5, 1983, to the applicant and [REDACTED]. She stated that her uncle, [REDACTED] raised her from birth until the age of two. She stated that, when she was two, the applicant brought her to the United States of America on

December 23, 1985. She stated that they lived at address in New York from December 1985 to 1991.

further stated that the applicant had resided at the [REDACTED] address since December 1984. She also asserted that the applicant resided in the United States continuously since the applicant's entry in December 1981. [REDACTED] provided a photocopy and translation of her Mexican birth certificate, which indicated her date of birth on June 5, 1983. The affiant's statements lack credibility as she purports to have first-hand knowledge of the applicant's entry in 1981 and continuous unlawful residence through 1984, which are dates prior to her birth and prior to her entry into the United States.

The affiant also provided a photocopy of her Mexican passport, issued on December 5, 1985. On page 29 of the passport, there is a U.S. visa issued on December 9, 1985 and a U.S. admittance stamp dated December 23, 1985.

Based on the above evidence, the applicant has not provided sufficient credible, contemporaneous evidence of residence in the United States before January 1, 1982, and continuous unlawful residence throughout the duration of the requisite period. It appears more likely that the applicant first entered the United States in 1985. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed, supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. 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 documents with discrepancies and minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

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, she 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.