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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 01 324 61213

Office: ATLANTA Date: OCT 22 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:

SELF-REPRESENTED

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.

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, Atlanta, 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.

On appeal the applicant asks that CIS reconsider her application.

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. 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).

An applicant must establish eligibility by a preponderance of the evidence. 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 petitioner 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.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied.

Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On June 15, 2005, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant responded that she had provided all of the evidence she could

On October 18, 2005, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal the applicant asserts she has provided all available documentation and asks that CIS approve her application.

Relevant to the period in question the record contains the following evidence:

- (1) Document, bearing the name [REDACTED], asserting he has known the applicant while she was employed at the Home Bakery in Pensacola, Florida in December 1981.
- (2) Document, bearing a seal from the City of Pensacola and signed by [REDACTED] asserting he has known the applicant since 1982 when she worked at The Court Florida Motel located in Pensacola, Florida.
- (3) Document, bearing the name [REDACTED] and a letterhead of Court Florida Motel, dated December 18, 1981, purporting to formalize an agreement that the applicant would reside at the hotel in exchange for work.
- (4) Document, bearing the name [REDACTED], asserting the applicant worked at her shop the Home Bakery from December 1981 to February 1991.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

There is no primary evidence in the record of proceeding, and the applicant's assertions of eligibility rest entirely on third party statements. The documents submitted are suspicious in nature. The document listed at No. 3 above is written in a third person narrative as opposed to first or second person as is typical with legal agreements, and was most likely back-dated to the date of December 18, 1981. These documents are so lacking in detail that they are not sufficiently credible to be granted any evidentiary weight in these proceedings. As an example, the letter from the Court Motel suggests that the applicant will work on staff at the hotel, and yet it is also asserted that the applicant worked at the Home Bakery during this time. It is not clear to what extent the applicant actually worked at either place, and there is no documentation in the record which corroborates the assertions contained in these documents.

The most glaring revelation that these documents are unreliable is that they contradict the information listed on an I-687, Application for Status as a Temporary Resident, submitted by the applicant. In that application the applicant asserts that she lived in Chicago, Illinois upon her arrival until at least 1990. She listed Chicago area addresses and employment from 1980 through the date of submission (1991) and provided an Illinois identification card with an Illinois address.

Doubt cast on any aspect of the petitioner's proof may undermine 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). 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. *Id.*

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

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