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

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FILE:

MSC 02 158 62622

Office: TAMPA

Date: OCT 30 2008

IN RE:

Applicant:

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:

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.

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 Director, Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel puts forth a brief disputing the director's findings.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 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).

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

At the time the applicant filed her Form I-687 application in March 1990, she presented: 1) page nine of a passport which indicated that a B-2 multiple entry non-immigrant visa was issued in Port of Spain, Trinidad on March 21, 1984 and a page that included the descriptive information and a photograph of the

applicant. Over the photograph is a seal from the immigration department of Trinidad and Tobago with a partial date of "24/??/82¹"; and 3) a Form I-690, Application for Waiver of Grounds of Excludability.

Item 36 of the Form I-687 application requests the applicant to list all of her employment in the United States since her first entry. The applicant claimed to have been a clerk typist since 1981; however, she did not list the names and addresses of her employers.

Along with the her LIFE application, the applicant submitted photocopies of her birth certificate and marriage register that occurred on June 4, 1988 in Trinidad and Tobago and a declaration indicating that she has resided in the United States since June 1981, departed in March 1984 and reentered with a B-2 visa three weeks later.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant only provided an affidavit notarized February 15, 2002, from H [REDACTED] of Staten Island, New York, who attested to the applicant's residence in the United States for over 20 years. The remaining documents submitted have no relevance as they serve to attest to the applicant's residence in the United States *subsequent* to the period in question.

The director, in denying the application, noted: 1) the applicant's failure to list the name and address of her employer(s) during the requisite period; 2) the immigration seal on her photograph from the immigration page of Trinidad and Tobago was issued after January 1, 1982; 3) the applicant's spouse submitted the same passport page (nine) and visa number with his application and, therefore, this document was highly suspicious; 4) the applicant failed to indicate on her class membership worksheet the reason why or location of the office where she was front-desked; 5) the affidavit from [REDACTED] only attested to have known the applicant for the past 20 years and that no additional information was provided; and 6) the applicant indicated on her Form G-325A, Biographic Information, signed March 1, 2002, that she resided in her native country, Trinidad and Tobago, from April 1961 to June 1982. The director determined that the applicant had not presented any credible documents to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts, in pertinent part:

The lack of proof of the applicant's exits back in the 1980's were not relevant to the decision as those exits back to Trinidad were brief, casual and innocent departures from the United States. The applicant did not give up her residence in Tampa Florida during those periods. Therefore, there was no basis to deny for this reason. It was patently unfair to assume the visa page was "highly suspicious if not a fraudulent submission" without any basis for making such an accusation. These are partial pages because the original were lost. If a page was mixed with her spouses' visa, this is understandable and not a "fraudulent" submission. These evidences go back well over twenty years and the applicant is honestly trying to obtain such evidence to the best of her ability. As for the date on the G-325A showing residence in Trinidad to 6/82, this is not an indication of lack of presence in the United States in 1981. The evidence of record does contain proof of presence in the United States in 1981. It is also understandable the applicant did not apply for a replacement I-94 arrival document as she did not remember the I-94 serial number that is needed to obtain the replacement. It is not a major omission that the applicant could not remember her employer in the clerical field. This type of work changes frequently and

¹ The month is indecipherable.

it is not always with the same employer. It is not possible to keep track of an employer in this type of work over a period of over twenty years.

Counsel submits:

- A notarized affidavit from a brother, [REDACTED] of Greenacres, Florida, who indicated that the applicant resided with him at [REDACTED], Lake Worth, Florida from June 1981 to June 1988. The affiant asserted that he paid the rent and the applicant's living expenses. As evidence of the affiant's residence, a copy of an envelope postmarked in 1988 was provided.
- A notarized affidavit from a brother, [REDACTED] of Land O Lakes, Florida, who attested to the applicant's residing at their brother's, [REDACTED] at [REDACTED] Lake Worth, Florida from June 1981 to June 1988. The affiant indicated that he was residing in Trinidad during this period and letters and other correspondence from his sister were destroyed by his grandmother's caregiver.

The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988 as she has presented contradictory and inconsistent documents, which undermines her credibility.

If the applicant's original passport was lost, the question arises as to how the applicant obtained the partial pages that were presented with her application. Counsel has not provided an explanation for this inconsistency. Further, counsel has not provided a plausible explanation why the immigration department stamp from Trinidad and Tobago was stamped after January 1, 1982 on the applicant's photograph and for the applicant's claim, on her Form G-325A, to have resided in Trinidad until June 1982.

Counsel submits additional documents including letters from her children and several receipts dated during the requisite period. The receipts have no probative value as the receipts failed to list the applicant's name and, therefore, they cannot be attributed to her. The additional documents also have no probative value as they serve only to attest to the applicant's residence in the United States *subsequent to* the requisite period. The letters from the applicant's children have no evidentiary weight as neither child was born before or during the requisite period. As [REDACTED] was not residing in the United States during the period in question, he cannot attest to the applicant's continuous residence in the United States.

[REDACTED] indicated that he has known the applicant for over 20 years, but failed to state the applicant's place of residence, provide details regarding the nature or origin of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.

The affidavit from the applicant's brother, [REDACTED] must be viewed as having a self-evident interest in the outcome of proceedings, rather than as an independent, objective and disinterested third party. In addition, this affidavit raises questions to its authenticity as the applicant claimed on her Form I-687 application to have resided at "[REDACTED]" from 1981 to 1987.

While it may not be possible to keep track of every employer an individual may have worked for over a period of twenty years, it is likely that one would remember an employer's name by at the time the Form I-687 application was filed in 1990. Furthermore, questions to whether **the applicant** was actually employed during the requisite period have been raised as the applicant's brother, [REDACTED] makes no attestation to the applicant's employment on his affidavit.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, 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.