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**U.S. Citizenship  
and Immigration  
Services**

L2

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: OCT 31 2008

[REDACTED] consolidated herein]

MSC 02 190 63700

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. 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, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief and additional documentation.

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 states 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The record reflects that the applicant, who was born in Trinidad on October 4, 1967, submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), in or about March 1990. The applicant claimed to have entered the United States on December 21, 1981, at John F. Kennedy International Airport in New York, and to have departed the United States to visit Trinidad on two occasions since that entry: (1) to take care of family business from July 12, 1982, to August 2, 1982; and, (2) to attend her mother's funeral from March 26, 1988, to April 15, 1988.

In support of the Form I-687, the applicant submitted a letter from the Consulate General of the Republic of Trinidad and Tobago in New York, stating that the applicant had been issued a Trinidad and Tobago passport (No. [REDACTED]) on June 29, 1982, in Port-of-Spain Trinidad; a photograph of the identification pages from a Trinidad and Tobago passport issued in New York on February 20, 2002; and, her Form I-94, Arrival/Departure Record, showing her admission into the United States as a nonimmigrant visitor for pleasure (B-2) on April 15, 1988, with authorization to remain until October 14, 1988. She also submitted the following documentation regarding her presence in the United States from prior to January 1, 1982, through May 4, 1988:

- A fill-in-the-blank affidavit of residence, dated April 6, 1992, from [REDACTED], stating that the applicant had resided with her from December 1981 to December 1989 at [REDACTED] (no city/state was provided), and that the rent receipts and household bills were in her ([REDACTED]) name and the applicant contributed toward the payment of rent and household bills.
- Three similar fill-in-the-blank affidavits of witness, dated April 1992, from: [REDACTED] of Hempstead, New York, who states that she knew the applicant's mother and met the applicant when she arrived in New York in 1981; [REDACTED] of Staten Island, New York, stating that she met the applicant at a friend's house eleven years ago; and, [REDACTED] of Rockville Center, New York, stating that he met the applicant through her aunt and her aunt's family. Each of the affiants state that they had personal knowledge that the applicant resided at [REDACTED], Springfield, Queens, New York, from December 1981 to December 1989.

None of the above-noted affiants provided telephone numbers for contact. Furthermore, the fill-in-the-blank affidavits are generally vague and lack details that would lend credibility to the affiants having had

direct and personal knowledge regarding the applicant's entry and residence during the requisite time period.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, under Section 1104 of the LIFE Act on April 8, 2002. The applicant was interviewed in connection with her Form I-485 on March 15, 2004. At that time, the applicant stated that she had initially traveled to New York in December 1981 (at the age of 14) with an unknown adult and entered using a passport belonging to another person. The reason for this was that her parents were getting a divorce and the applicant's mother sent her to the United States to hide the applicant from her father. The applicant alleged that her aunt, [REDACTED], picked her up at the airport and that she lived with her in Springfield Gardens, Queens, New York. The applicant further testified that she left the United States in June or July 1982 to return to Trinidad and re-entered the United States in August 1982 with a nonimmigrant visitor's visa (B-2). She also stated that she returned to Trinidad in March 1988 and re-entered the United States in April 1988 – again as a nonimmigrant visitor.

In a Notice of Intent to Deny (NOID) the Form I-485, dated September 30, 2005, the director found that the applicant had failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988. The director specifically noted that a review of the applicant's passport (No. [REDACTED] – the one that was issued on June 29, 1982 in Port-of-Spain Trinidad) revealed that the applicant was issued a nonimmigrant visa at the American Consulate in Port-of-Spain on July 19, 1982, and that the applicant had departed Trinidad and entered the United States as a nonimmigrant visitor on August 2, 1982, and April 15, 1988. The director also noted that the applicant had presented an extract of her birth certificate that was issued on June 18, 1982, in Trinidad. The director concluded that the applicant had initially entered the United States on August 2, 1982 – not December 31, 1981 as claimed. The director also found that the affidavits previously submitted were inadequate in that they did not contain telephone contact numbers.

In response to the NOID, counsel submitted a letter from the applicant stating, in part:

“...My first entry into the United States was in December 1981. I exited the country July 1982 and entered the United States on August 2, 1982. My passport was extended in Trinidad on January 25<sup>th</sup>, 1988 by the help of my mother. My mother knew someone in the passport office in Trinidad at the time which my passport was extended. I did not have to be in the country for my passport to be extended. My mother sent me the forms for signing by mail in the United States. I then send the forms back to her duly signed along with the necessary fees in US currency for her to exchange upon receipt. After my mother extended my passport, she then mailed it to me in the United States. I then departed the United States in July 1982 and entered on August 2, 1988.

My second departure from the United States was on March 26, 1988, which was to attend my mother's funeral. I spent some time in Trinidad and departed on April 15, 1988...

My birth certificate was issued to me in June 18<sup>th</sup>, 1982 by my aunt, whom works in the Registrar General's Office in Trinidad...."

Counsel also resubmitted a photocopy of the affidavit previously provided by on which telephone contact numbers were hand-written, as well as a notarized affidavit from the applicant stating that her departure from the United States from March 26, 1988 to April 15, 1988 was in order "to visit an ill relative."

It is noted that the dates provided by the applicant in her letter seem to be confused when compared to her earlier statements ("...I departed the United States in July 1982 and entered on August 2, 1988") and that the affidavit regarding the reason for her trip to Trinidad from March to April 1988 differed from "to attend her mother's funeral," to "to visit an ill relative."

In a Notice of Decision (NOD), dated July 20, 2006, the director denied the application. The applicant filed an appeal from the director's decision on August 17, 2006.

On appeal, the applicant provides the following additional documentation in an attempt to establish her continuous unlawful residence in the United States since before January 1, 1982, through May 4, 1988:

- A letter from of Pembroke Pines, Florida, stating that she had known the applicant in Trinidad since 1969, and that, in 1981, the applicant's mother "abruptly sent her to the United States, hiding her from her father, while they went through a very messy divorce." Ms. states that she lost contact with the applicant until 1988 when her mother died, and that since then they have kept in contact.
- A letter, dated August 11, 2006, from stating that she had known the applicant since she was a little girl and that the applicant's mother sent her to the United States in December 1981 due to her mother and father having a bitter divorce. Ms. states that she tried to help the applicant by giving her home schooling.
- A hand-written letter, dated August 4, 2006, from of Jamaica, New York, stating that she had known the applicant in Trinidad, lost contact with her in 1981 because the applicant left the country in an emergency, and re-connected with her in New York in 1985, at which time the applicant told her that she had moved to New York in 1981.
- A letter, dated February 25, 2006, from the applicant's father, of Stratford, Connecticut, stating that he lost all contact with his daughter in 1980 when he and her mother separated, that her mother sent her to New York to avoid any communications with him, and that it was not until March 1988 when he saw the applicant at her mother's funeral that he found out she was living in New York.

- An affidavit, dated September 14, 2006, from [REDACTED] of Tampa, Florida, stating, in part, that when she was living in Queens, New York, the applicant lived with her at [REDACTED] [REDACTED]; that on December 21, 1981, Ms. [REDACTED] “dropped off” the applicant at her home – where she lived until December 1989; that she could not send the applicant to school because she (the applicant) had no legal papers - therefore she home-schooled the applicant; and, that soon after the applicant arrived in the United States, her mother sent her forms to fill out to obtain her own passport.
- A letter, dated February 22, 2006, from [REDACTED] of Brentwood, New York, stating, in part, that she picked the applicant up from JFK International Airport on December 21, 1981, from “an elderly couple who claimed they were friends of [the applicant’s] mother, and subsequently drove the applicant to her aunt [REDACTED]’s home in Queens where the applicant stayed and received home schooling.
- A letter, dated August 28, 2006, from the Consulate General for the Republic of Trinidad and Tobago in New York, stating that since the applicant was a minor in June 29, 1982, her mother “was able to obtain the passport in her absence.”
- A photocopy of a page from a passport indicating that it was issued in Trinidad and Tobago on June 29, 1982, valid until June 28, 1987, and was renewed in Trinidad and Tobago on January 25, 1988, valid until June 28, 1992.

The applicant also submitted a letter, dated August 2, 2006, explaining that in her letter of October 2005, she used the word “extended” referring to her passport incorrectly, and meant to say “issued.” The applicant also submitted a letter, dated August 9, 2006, stating, in part, that in December 1981 she had been traumatized by news of her parents getting a divorce. She recalls arriving at JFK on a very cold rainy day and being delayed at the airport because she did not have a passport of her own. She was picked up at the airport by her Aunt [REDACTED] who drove her to her Aunt [REDACTED] house in Queens where she lived as part of the family and received home schooling.

Based on the evidence contained in the record, the applicant obtained an extract of her birth certificate in Trinidad on June 18, 1982, a passport in Trinidad on June 29, 1982, a nonimmigrant visa from the American Consulate in Port-of-Spain, Trinidad, on July 19, 1982. She was then admitted to the United States at JFK International Airport in New York on August 2, 1982. She remained in the United States until returning to Trinidad on an unknown date and reentered the United States a second time on April 15, 1988.

The applicant, however, claims that her first entry into the United States was in December 1981 – when she was 14 years old, with unknown persons and documentation belonging to someone else. The applicant claimed at the time of her Form I-485 interview, that her aunt [REDACTED] picked her up at the airport – however, Ms. [REDACTED] and [REDACTED] both state that it was [REDACTED] that picked the applicant up at the airport and drove her to the home of [REDACTED]. Ms. [REDACTED] also states that the

“unknown persons” were, in fact, an elderly couple who were friends of the applicant’s mother. No one has provided the names and/or or address(es) of this couple.

████████████████████ and ██████████, are also vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their claims of alleged 25 plus year relationships with the applicant. It is unclear as to what basis they claim to have direct and personal knowledge of the events and circumstances of the applicant’s residence in the United States. As such, their statement can be afforded minimal weight as evidence of the applicant’s entry into the United States and her residence and presence in the United States throughout the requisite period. Furthermore, the applicant’s father, ██████████, states that he had no contact with the applicant at any time during the requisite period.

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 (5<sup>th</sup> ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 evidence contained in the record, the lack of detailed affidavits, and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.