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U.S. Citizenship
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Services

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FILE:

MSC 03 220 60691

Office: LOS ANGELES

Date:

SEP 22 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.

Robert P. Wiemam, 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) 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 from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts that a response was submitted in response to the Notice of Intent to Deny. Counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel submits copies of the documents submitted in response to the Notice of Intent to Deny.

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.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- A notarized affidavit from [REDACTED] of Costa Mesa, California, who indicated that the applicant resided with her for seven months in 1984. The affiant asserted that she has maintained a good friendship with the applicant since that time.
- A notarized affidavit from [REDACTED] of Huntington Beach, California, who attested to the applicant's residence in Costa Mesa since 1987. The affiant indicated that the applicant is "a girlfriend of a friend of mine."
- A notarized affidavit from [REDACTED] of Huntington Beach, California, who attested to the applicant's residence in Costa Mesa since 1988. The affiant indicated that the applicant is "my friend [REDACTED]'s girlfriend."
- A notarized affidavit from [REDACTED] of Anaheim, California, who indicated that he first met the applicant at a Christmas party in December 1984. The affiant asserted that he "learned" of the applicant's November 1981 entry into the United States through conversations with the applicant. The affiant asserted that he renewed his friendship with the applicant in 1986 and has remained friends since that time.
- A notarized affidavit from [REDACTED] of Anaheim, California, who indicated that he has known the applicant since early 1982 as he was a neighbor of the applicant. The applicant attested to the applicant's residence at [REDACTED], California.
- A notarized affidavit from [REDACTED] of Santa Ana, California, who indicated that he personally knows that the applicant came to the United States in November 1981. The affiant asserted that he met the applicant's boyfriend, [REDACTED] in October 1982 who in turned introduced the applicant to him. The affiant asserted that he has remained friends with the applicant since that time.
- A notarized affidavit from [REDACTED] of Costa Mesa California, who indicated that he entered the United States in 1985, and was introduced to the applicant in December 1985 at [REDACTED]. The affiant asserted that he has remained friends with the applicant since that time.

In a declaration, the applicant indicated that she entered the United States in November 1981 and resided at [REDACTED], she attended school in Costa Mesa from January 1982 to September 1983 and resided at the home of [REDACTED] for approximately seven months in 1984. The applicant asserted that in March 1995, she paid an individual to prepare her application under the *CSS Newman* and *LULAC* class action lawsuits; however, the individual disappeared in June 1995. The applicant asserted that the individual's disappearance resulted in a loss of vital documents that would have established her continuous residence in the United States during the requisite period.

On December 7, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that she had not provided sufficient evidence to establish her arrival in the United prior to January 1, 1982 as the affidavits submitted only served to establish her residence since 1982. The director noted that at the time of her LIFE interview, the applicant indicated that she had no further evidence to submit.

The director, in denying the application, noted that the applicant failed to respond to the notice. However, the record reflects that a response was received at the Los Angeles District Office prior to the issuance of the director's Notice of Decision dated January 11, 2007. Therefore, the response will be considered on appeal.

In response, counsel submitted a sworn declaration from the applicant, who reiterated the statements made in her earlier declaration. In addition, the applicant asserted that the reason why she informed the interviewing officer that she did not have any additional documentation to submit was because all the evidence she had was given to the individual who assisted her in filing her legalization application. The applicant asserted that she was submitting two additional affidavits from an individual who attested to her continuous residence during the requisite period. The applicant indicated that the affiants were unavailable at the time of her LIFE interview. The applicant submitted:

- A notarized affidavit from [REDACTED] of Anaheim, California, who indicated that he has personally known the applicant since December 1981. The applicant indicated that his relatives were neighbors of the applicant and every other weekend he and his family would visit his relatives in Costa Mesa. The affiant asserted that the applicant attended his 1982 wedding and that he has remained friends with the applicant since that time.
- A notarized affidavit from [REDACTED] of Anaheim, California, who indicated that he met the applicant on Christmas in December 1981 at [REDACTED] California. The affiant asserted that he worked with the applicant's uncle on the weekends in landscaping and had dinners with her family.

On appeal, counsel asserted that as the applicant was a minor at the time of her illegal entry, she could not have afforded to register before the United States government, or any of its offices, affiliates or political subdivisions. Counsel asserts, in pertinent part:

The above mentioned proofs, as mentioned in [the applicant's] affidavits previously submitted to the Service, were all lost when they were submitted to a lady paralegal [name omitted] whose office was raided and all files were confiscated by the combined agents of the F.B.I. and the then I.N.S.”

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits 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. The statements issued by the applicant and 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 inconsistent documents, which undermines her credibility. Specifically:

1. As the applicant was 14 years of age when she claimed to have entered the United States, the applicant would have been residing with an adult during the earlier portion of the requisite period. The applicant and most of the affiants asserted that the applicant resided at the home of her aunt and uncle during the period in question. However, the applicant did not submit an affidavit from [REDACTED] to corroborate the affiants' affidavits and her

own statement. The applicant's failure to provide an attestation from either individual raises serious questions about the credibility of her claim and the authenticity of the affidavits submitted. The applicant, in her declaration, indicated that during the requisite period, she resided in the same home as [REDACTED]. However, the applicant has not provided an attestation from this individual to corroborate her statement.

2. The applicant has not provided any evidence to support her claim to have attended school in the United States from January 1982 to September 1983. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).
3. The affidavit from Ines [REDACTED] lacks probative value as the affiant indicated that the applicant resided with her for seven months in 1984, but failed to include the address where the applicant resided during the period in question.
4. The affidavits from [REDACTED] may only serve to establish the applicant's residence in the United States since 1985, 1987 and 1988, respectively.
5. As [REDACTED] claimed to have known the applicant since December 1984, the affiant cannot attest to the applicant's residence in the United States from prior to December 1984. Likewise, [REDACTED] cannot attest to the applicant's residence prior to January 1, 1982 as they attested to having known the applicant in early 1982 and October 1982, respectively.

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). 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.