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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] Office: GARDEN CITY Date: **SEP 23 2008**  
MSC 03 248 62126

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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. 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, 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 demonstrate that she resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserts that the director erred in the Notice of Decision (NOD) by stating that she did not submit additional evidence for consideration. The applicant contends that she did submit additional evidence in a timely manner in response to the Notice of Intent to Deny (NOID). The applicant submits a copy of a U.S. postal service label, which is addressed to the Citizenship and Immigration Service office in Garden City, New York, and postmarked on May 15, 2007. However, the applicant did not submit any additional evidence or 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 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 through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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 (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). 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.12(f).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant’s claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

On June 5, 2003, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). In the NOID, dated April 19, 2007, the director stated that the applicant failed to submit credible documents which would constitute a preponderance of evidence of her entry and residence in the United States during the statutory period. The director granted the applicant thirty days in which to submit additional evidence. In the NOD, dated May 25, 2007, the director stated that the applicant failed to submit additional evidence and, therefore, denied her application.

On appeal, the applicant contends that she did submit additional evidence in a timely manner in response to the NOID. The applicant submits a copy of a U.S. Postal Service label, which is addressed to the Citizenship and Immigration Service office in Garden City, New York, and postmarked on May 15, 2007. This label tends to prove that the applicant mailed a document to the director. However, there is nothing in the record to indicate documents were received from the applicant or that those documents pertained to her I-485 application. In addition, the applicant failed to provide copies of the previously submitted evidence. Therefore, the record will be considered complete.

As noted by the director in the NOID, during her August 18, 2004, interview, the applicant asserted that she entered the United States on June 1981 on a B2 tourist visa. However, the

applicant failed to submit any evidence regarding her claimed entry, such as her passport with an entry stamp or airline tickets. The lack of evidence detracts from the credibility of her claim.

In support of her claim of continuous residency during the statutory period, the applicant submitted one declaration in support of her claim. The record contains a declaration, dated April 28, 2004, from [REDACTED], Associate Pastor at Our Lady of Victoria R.C. Church. The declarant stated that the applicant has been a member of the parish community and a regular participant of religious services since 1981, when he started providing spiritual services to Brazilian immigrants in New York.

By regulation, letters from churches should identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). The declarant failed to provide the applicant's address during the entire membership period and establish the origin of the information being attested to. In addition, as noted by the director, this declaration is inconsistent with the applicant's Form I-687, Application for Status as a Temporary Resident, dated March 7, 1991. In her Form I-687, the applicant stated that she resided in Florida from July 1981 to August 1984. There is nothing in the record to explain how the applicant regularly attended services in New York, when she resided in Florida.

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). The record contains no independent objective evidence to explain the above inconsistency. This discrepancy seriously detracts from the credibility of the applicant's claim.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have entered the United States in June 1981 and to have resided for the duration of the requisite period in the United States. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. In this case, her assertions regarding her entry are not supported by any credible evidence in the record. For the reasons noted above, the document submitted in support of the applicant's claim has been found to lack credibility as evidence of the applicant's residence and presence in the United States for the requisite period.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that she resided in the United States for the requisite period.

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 lack of credible supporting documentation 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 from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.