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[Redacted]

FILE: [Redacted]  
MSC 03 248 62394

Office: LAS VEGAS

Date: **SEP 29 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:

[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, Las Vegas, 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, counsel asserts that the applicant does not have school records because she refused to attend school due to harassment by fellow students regarding her physical disability. Counsel provides medical records to establish that the applicant is disabled. Counsel contends that as the all of the applicant's siblings were born in the United States and her parents resided in the United States during the statutory period, then it is only logical to infer that the applicant was also residing in the United States. Counsel further contends that although the documentation presented is not abundant, the applicant's testimony is credible and satisfies her burden of proof.

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 not met her 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 support of her application, she provided affidavits, medical records, and other documentation relating to the statutory period.

The applicant submitted three affidavits, dated March 27, 1990, from [REDACTED]. All of the affiants stated that they have personal knowledge that the applicant has resided in the United States from 1981 to the present. All of the affidavits are notarized by [REDACTED], Notary Public, State of Nevada. The record also contains a Form I-687, Application for Status as a Temporary Resident, signed by the applicant on March 27, 1990. The Form I-687 is also notarized by [REDACTED].

The AAO notes that the record contains a Notice of Intent to Revoke, dated November 1, 1996. The director stated that [REDACTED] was convicted in the United States District Court, District of Nevada, of 18 USC 371, 1001 (Conspiracy to File False Statements to the Immigration and Naturalization Service), 18 USC 1015(d) (False Acknowledgement), and 18 USC 2 (Aiding and Abetting) for her role in filing fraudulent Legalization, SAW and class membership applications in Las Vegas, Nevada. The director also stated that the investigation revealed that the above affidavits by [REDACTED]

██████████ were fraudulent. Therefore, the above affidavits and Form I-687 application will be given no probative value as evidence of the applicant's residence in the United States during the requisite period.

The remaining evidence in the record consists of copies of the applicant's medical records and her sibling's birth certificates. On appeal, counsel submitted copies of the applicant's medical records from Orthopaedic Hospital in Los Angeles, California. The medical records indicate that the applicant was seen in 1978 and had surgery in 1979. Based on this evidence, the applicant entered and resided in the United States prior to January 1, 1982. While counsel asserts that the applicant has a physical disability, the record does not include any medical records during the statutory period. The absence of any medical records from 1982 through 1988 seriously brings into question the credibility of the applicant's claim of residency.

It is also noted that there is a discrepancy in the record regarding the applicant's disability. The record contains a Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, dated March 20, 1990. The Form I-693 was completed by ██████████ and signed by both ██████████ and the applicant. ██████████ indicated he found "no apparent defect, disease or disability." There is nothing in the record to reconcile this finding with counsel's assertion that the applicant is disabled.

Counsel also provides copies of the applicant's siblings' birth certificates from the State of California, dated in 1979, 1981 and 1985. Counsel contends that as all of the applicant's siblings were born in the United States and her parents resided in the United States during the statutory period, then it is only logical to infer that the applicant was also residing in the United States. However, the record does not contain any evidence of her parents' continuous residence in the United States other than their names documented in the above noted birth certificates. Even if the birth certificates are given some weight as evidence of her residency for the years 1981 and 1985, the lack of any evidence for the remaining years (1982, 1983, 1984, 1986, 1987 and 1988) casts further doubt on the credibility of the applicant's claim of continuous residence during the statutory period.

The record also includes copies of post-marked envelopes (dates illegible) to the applicant from Mexico. As the dates are illegible, no weight can be given to the envelopes. The record also contains copies of hand-written letters in Spanish to the applicant. Only one of the letters, dated in 1986, falls within the requisite period. However, the letter does not contain the name of the applicant, the recipient or the sender. Lacking relevant details, it will not be given any weight as evidence of the applicant's residence in the United States during the statutory 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. Based on her medical records, the applicant entered the United States in 1978. However, the evidence does not support her claim of continuous residence in the United States during the statutory period.

The AAO concludes 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.

Beyond the decision of the director, as previously mentioned, the record indicates that the applicant submitted three fraudulent affidavits in support of her application. Given this, the issue of misrepresentation must also be addressed.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under BIA precedent, a material misrepresentation is one which “tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he be excluded.” *Matter of S- and B-C-*, 9 I & N Dec. 436, 447 (BIA 1961).

The applicant knowingly submitted fraudulent affidavits, which were directly relevant to the applicant’s eligibility, in order to procure an immigration benefit. These false affidavits misrepresented the applicant’s residence in the United States during the statutory period. The AAO finds this to be a material misrepresentation. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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