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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAY 25 2007

MSC 02 141 60108

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, of if the matter 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 District Director, Los Angeles, California 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. In the Notice of Intent to Deny (NOID), the director stated that the affidavits submitted by the applicant "do not contain sufficient information and corroborative documents, thus lacking in probative value." The director denied the application observing that the information submitted by the applicant "failed to overcome the grounds for denial as stated in the NOID."

On appeal, counsel asserted that the applicant had submitted ample evidence of residency and also submitted additional evidence.

On March 2, 2007, the AAO issued a Notice of Intent to Deny indicating that the application would be denied because the applicant had submitted falsified documentation and is therefore inadmissible pursuant to Section 212(a)(6)(C) of the Immigration and Nationality Act (the Act). The AAO noted the following discrepancies:

1. The application was prepared and signed by [redacted] has testified that the applications she prepared or that were prepared at her office contained false and fraudulent affidavits, employment letters, and other documents which made it appear that unqualified applicants were qualified for certain immigration benefits. On August 9, 1993 [redacted] was convicted of 18 U.S.C. § 371 (Conspiracy to File False Statements to the Immigration and Naturalization Service), 18 U.S.C. § 1001 (Filing False Statements to the Immigration and Naturalization Service) and 18 U.S.C. § 2 (Aiding and Abetting) for her role in filing fraudulent Legalization, SAW and class membership applications with the United States Immigration and Naturalization Service in Las Vegas, Nevada.

2. In an attempt to establish residence within the United States during the qualifying period, the applicant provided documentation showing that she worked for [redacted] in San Gabriel, California. On her Form I-687, Application for Status as a Temporary Resident, the applicant indicated that she worked for this employer from September 1981 to June 1982 consistent with an affidavit in the record from [redacted], owner of [redacted]. However, the record also contains a letter dated September 20, 1989 from [redacted] in which she indicated that the applicant worked for her from September 1981 to January 1982. In addition, the record contains copies of the applicant's pay stubs from [redacted] dated in 1986.

3. The applicant submitted a postmarked envelope from a letter she allegedly sent in 1981. The envelope contains the applicant's name and a return address in El Monte, California. However, on the applicant's Form I-687, she listed an address in Whittier, California as her only residence in the United States from September 1981 through the date she signed that form, September 23, 1989.

4. The record contains copies of the applicant's I-94 cards and other documents indicating she was admitted to the United States in 1982, 1985 and 1986, but there is insufficient evidence in the record to support the applicant's assertions concerning the exact duration of her absences from the United States prior to each entry.

In response to this NOID, the applicant asserts that she knew nothing of [redacted] fraudulent activities until she received the NOID. The applicant maintains that all the evidence she submitted through [redacted] "was honest and true" and that "[n]o one ever manufactured any false statement of evidence on [the applicant's] behalf."

The applicant asserts that she worked for [redacted] for September 1981 to June 1982, and counsel contends that the [redacted] made an error in her letter. Counsel submits an affidavit notarized on March 15, 2007 from [redacted] in which she states that the applicant worked for her as a "sewing machine operator" from September 1981 to June 1982, and again temporarily in 1986.

The applicant maintains that her brother lived at the El Monte address, and that she "used his return address when [she] was visiting him."

Counsel argues that the copies of the applicant's I-94 cards in the record support the applicant's claims regarding her absences from the United States and also demonstrate the applicant's presence in the United States during the qualifying period.

Finally, the applicant submits several postmarked envelopes dated in the years 1982, 1986, 1987 and 1988 bearing the applicant's address at [redacted] in Whittier, California and a receipt from American Airlines showing that she purchased airfare from New York City to Los Angeles, California on August 4, 1982.

An applicant for permanent resident status 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 and through May 4, 1988. 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 petitioner 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 petitioner 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 or petition.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the submitted evidence is not sufficiently relevant, probative and credible.

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

- An affidavit notarized on March 15, 2007 from [redacted] in which she states that the applicant worked for her as a "sewing machine operator" from September 1981 to June 1982, and again temporarily in 1986 under the name [redacted]
- An affidavit notarized on November 16, 2004 from [redacted] stating that he has known the applicant since 1981 and they "are constantly getting together."
- A letter dated November 12, 2004 from [redacted] General Manager of Atlas Builders Supply Co. in Los Angeles, California stating that the applicant has been a customer of the store since September 1981.
- An affidavit notarized on November 11, 2004 from [redacted] stating that she worked for the company owned by the applicant's brother and met the applicant in September 1981.
- A letter dated November 15, 2004 from [redacted] and Secretary [redacted] of the Slavic Christian Center in Montebello, California stating that the applicant has been attending the church since October 1981 although she later became a member of another church.
- A letter dated June 22, 2003 from [redacted] and Secretary [redacted] of the Slavic Christian Center in Montebello, California stating that the applicant was a member of the Slavic Christian Center from October 1981 through 1985.

- A letter dated June 3, 2003 from [redacted] stating that the applicant has been a patient since March 11, 1998, and that she "was formerly [redacted] patient with records dating December 21, 1982 through February 1981. A copy of a dental record, which is partially written in the Spanish language, is attached.

- A letter dated August 22, 2001 from [redacted] owner of RAF Enterprises, stating that the information contained in his letter of September 26, 1989 are true and that he has known the applicant since December 1981.

- An affidavit notarized on September 26, 1989 from [redacted] of Montebello, California stating that she employed the applicant to take care of her during an illness from August 1982 to July 1983.

- A letter dated September 26, 1989 from [redacted] of R.A.F. Enterprises in Montebello, California stating that the applicant worked for the company from August 1983 until January 1985.

- A letter dated September 25, 1989 from [redacted] of Mencor Drywall, Inc. stating that the applicant was employed by the company from August 1985 to that date.

- An affidavit notarized on September 20, 1989 from [redacted] stating that the applicant worked for her under the nam [redacted] as a sewing machine operator from September 1981 to January 1982.

- A letter dated December 12, 1988 from [redacted] of [redacted] stating that the company employed the applicant from February 1985 to July 1985.

- The applicant's auto insurance identification card dated March 31, 1988.

- A repayment schedule showing payments by the applicant to [redacted] in 1987 and 1988.

- A receipt dated March 29, 1988 issued to the applicant for "DOL" by [redacted].

- A receipt dated March 15, 1988 issued to the applicant by [redacted]

- A receipt dated January 10, 1988 from [redacted] for unspecified instruction.

- Medical test results for the applicant issued by Bankhead Clinical Laboratory in December 1987 and Central Diagnostic Laboratory in January 1988.

- A letter dated October 19, 1987 from [redacted] of the Covina Assembly of God addressed to the applicant showing her financial contributions to the church.

- An automobile insurance policy receipt with due date June 30, 1987 but not bearing the name of the insured.
- Receipts dated in 1987 and 1988 issued to the applicant by [redacted]
- A receipt dated on August 17, 1987 issued to the applicant by [redacted], a dentist in practice in Alhambra, California.
- Paystubs for the applicant from [redacted] dated in 1986.
- The applicant's California driver license issued on January 17, 1985.
- Several postmarked envelopes dated in the years 1982, 1986, 1987 and 1988 bearing the applicant's address at [redacted] in Whittier, California.
- A receipt from American Airlines showing that the applicant purchased airfare from New York City to Los Angeles, California on August 4, 1982.
- An envelope apparently postmarked in 1981 bearing the applicant's return address of [redacted] in El Monte, California.
- Various photographs of the applicant allegedly taken in the United States during the qualifying period.
- Various receipts and other documents dated during the qualifying period but not bearing the applicant's name.
- A statement fro _____ indicating that the applicant worked for her from September 1981 to June 1982 under the name [redacted]

Although the applicant has submitted substantial evidence demonstrating her presence in the United States during most of the qualifying period, the evidence that she entered the United States and established unlawful residency prior to her legal entry in July 1982 is not relevant, probative and credible.

The applicant has failed to resolve the inconsistency in the testimony of [redacted]. The counsel's assertion tha[redacted] simply made a mistake is not sufficient. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant has submitted a new affidavit from [redacted] but [redacted] fails to explain in this affidavit why she submitted inconsistent statements concerning the dates of the applicant's employment in the past.

The AAO also finds the applicant's explanation concerning the envelope apparently postmarked in 1981 insufficient. It is noted that the postmark on the original envelope is only partially legible and the stamp has been removed complicating efforts to confirm the authenticity of the envelope.

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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* The applicant has failed to submit credible evidence that adequately resolves the inconsistencies noted in the NOID. These inconsistencies raise serious doubts concerning the applicant's claim to have entered the United States and establish unlawful residency prior to January 1, 1982.

The record does not contain specific evidence showing that [redacted] submitted fraudulent documentation or other information in connection with the present application. Therefore, the AAO does not at this time make a finding of inadmissibility for fraud or misrepresentation in this case. However, given the unresolved discrepancies in the evidence of residency submitted by the applicant, the AAO finds that the applicant has not met her burden of proving continuous residence in an unlawful status in the United States from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has not established eligibility to adjust to Legal Permanent Resident status under section 1104 of the LIFE Act.

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