U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEW YORK Date: MAR 19 2008

MSC 03 193 61326

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 [or Records] 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.

for 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, New York City. It is now on appeal before the Administrative Appeals Office (AAO). 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.

On appeal, counsel asserts that the applicant entered the United States in October 1981 and resided in the United States continuously thereafter except for a stay in Poland, lasting from September 1, 1985 to February 23, 1986, to be with her husband during an extensive hospitalization. According to counsel, the duration of the applicant's stay in Poland was due to "emergent reasons" as contemplated in the regulations, and thus did not interrupt her continuous residence in the United States.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1) as follows: "An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed."

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States." The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." 8 C.F.R. § 245a.16(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 its amenability to verification. *See* 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 applicant filed her current application for permanent resident status under the LIFE Act (Form I-485) on April 11, 2003. In a Notice of Intent to Deny (NOID), dated April 20, 2005, the director cited the applicant's interview for LIFE legalization on May 11, 2004, at which the applicant stated that she arrived in the United States in October 1981 with a B-1/B-2 visa and that she left the United States from September 1, 1985 to February 23, 1986 – a total of five months and 22 days – to be with her seriously ill husband in Poland. The director determined that the applicant's two children residing in Poland, who were 18 and 19 years old at the time, could have provided care for their father so that it was not necessary for the applicant to be absent from the United States for such a long period of time, thereby interrupting her continuous residence in the county. The applicant was given 30 days to provide additional evidence.

In response to the NOID, counsel submitted a letter explaining that the applicant's husband, who also resided in Poland, was seriously injured in an automobile accident on August 28, 1985, and was hospitalized in an unconscious state. Counsel stated that the applicant flew to Poland to be with her husband on September 1, 1985, and stayed at his side during the next several months as he underwent two blood transfusions and two stomach surgeries. As evidence of this hospitalization and medical treatment counsel referred to an information sheet from the hospital in Poland, dated January 30, 1986, which confirmed that [redacted] the applicant's husband, stayed in the hospital from August 28, 1985 to January 30, 1986, during which time he was treated for an ulcerous and hemorrhaging stomach with two blood transfusions and two surgical operations. The applicant stayed with her husband a little longer while he recovered, counsel indicates, before returning to the United States on February 23, 1986. Counsel asserted that the

applicant's children were in boarding schools with short holiday breaks at the time, which made them unable to be with their father during his hospitalization. As evidence thereof counsel referred to letters from the two schools in question confirming that the applicant's son and daughter were in school from September 1, 1985 to June 15, 1986 and unable to spend time at home with their father during the academic year except during national and religious holidays. Counsel concluded that the foregoing circumstances constituted "emergent reasons" for the applicant's inability to return to the United States within 45 days, and thus did not interrupt her continuous residence in the country.

In a Notice of Decision, dated February 23, 2006, the director denied the application on the ground that the applicant's absence from the United States exceeded the 45-day maximum for a single absence, prescribed in 8 C.F.R. § 245a.15(c)(1), and the applicant failed to establish that "emergent reasons" accounted for her long stay in Poland because other family members in the country (her children) could have taken care of her husband. The director also noted that the applicant claimed on the Form I-687 she filed in January 1991 (in conjunction with her "LULAC Class Member Declaration") that she was issued a B-2 visa in Warsaw, Poland, on September 2, 1981, and entered the United States on October 9, 1981 for an authorized stay of six months, until April 8, 1982. That would mean that the applicant entered the United States as a legal nonimmigrant, the director indicated, and was not in an unlawful status before January 1, 1982. For both of these reasons, the director concluded, the applicant had failed to establish that she was continuously resident in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required to be eligible for legal permanent residence under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A).

On appeal counsel acknowledges that the applicant has no primary documents to evidence her alleged legal entry into the United States in October 1981, but contends that should not be an issue in this proceeding. Counsel cites a document entitled "LULAC vs. INS Processing Sheet and Informal Notes," dated January 24, 1991, as indicating that the only reason the interviewing officer denied the applicant LULAC benefits at that time was because her stay outside the United States in 1985-86 exceeded 45 days. Counsel reiterates the applicant's claim that the circumstances of her stay in Poland to assist in the care of her husband constitute "emergent reasons" that prevented her timely return to the United States and did not interrupt her continuous residence in this country. Counsel also cites previously submitted affidavits from friends as further evidence of her residence in the United States from October 1981 to the present.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish that her unlawful residence in the United States began before January 1, 1982, and continued uninterruptedly through May 4, 1988. The AAO determines that she has not.

As previously indicated, there is no documentary evidence to confirm the applicant's legal entry into the United States in October 1981. On the Form I-687 she filed in connection with her LULAC class membership claim, dated January 10, 1991, as well as in her LULAC interview on

January 24, 1991, the applicant stated that she was issued a B-2 visitor visa in Warsaw, Poland, on September 2, 1981, entered the United States with that visa at JFK Airport on October 9, 1981, had an authorized stay of six months until April 8, 1982, and proceeded to violate her legal status by overstaying the visa. If that was the case, the applicant's unlawful status in the United States would not have begun before January 1, 1982, rendering her ineligible for legal permanent residence under section 1104(c)(2)(B)(i) the LIFE Act, as indicated in the district director's decision. [1]

There is conflicting evidence in the record, however, as to whether the applicant was in the United States at all before 1986. While the applicant has submitted affidavits from two acquaintances who claim to have boarded and employed her in the United States from October 1981 to January 1986, the record also includes a Form G-325A, Biographic Information, which the applicant prepared in conjunction with an application for political asylum in December 1991, in which she identified her address for the 20-year time period from October 1965 to February 1986 as [redacted] in the city Tarnowskawola, Poland. This information is consistent with the earliest documentation of the applicant's entry into the United States, which consists of stamps in her passport confirming that she was issued a B-2 visa in Warsaw on February 13, 1986, and that she was admitted into the United States in New York on February 23, 1986.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence reflects on the reliability of the applicant's remaining evidence. *See id.*

The only evidence the applicant has submitted in support of her claim to have been in the United States before 1986 are affidavits (1) from [redacted], dated January 12, 1991, stating that the applicant lived and worked as a housekeeper in his home in Irvington, New Jersey, from October 1981 to June 1983; and (2) from [redacted], dated January 22, 1991, stating that the applicant lived and worked in his home in Brooklyn, New York, as a home attendant, and taking care of his mother, from July 1983 to January 1986. [redacted] also stated that the applicant terminated her employment with him on January 30, 1986, when she left the United States to be with her husband in Poland. The foregoing affidavit information directly conflicts with the residence information provided by the applicant later that same year (1991) on her Form G-325A, submitted with her asylum application, in which she indicated that she lived in Poland all of that time from 1981 to February 1986. The information from [redacted] also conflicts with the applicant's claim that she returned to Poland on September 1, 1985. Given these irreconcilable conflicts, the affidavits have no evidentiary weight. There is no

[1] According to other information provided by the applicant, however, if she did enter the United States as early as October 1981 she violated her visa status almost immediately by taking employment. If she was working before January 1, 1982, as she claims, the applicant would already have been in an unlawful status at that time, and not ineligible for LIFE legalization on that particular ground.

contemporaneous documentation in the record dating before 1986, which demonstrates that the applicant was physically present and resided in the United States at any time between October 1981 and February 1986.

In view of the numerous evidentiary discrepancies discussed above, and the lack of any probative evidence of the applicant's residence in the United States before her first documented entry into the country on February 23, 1986, the AAO determines that the applicant has failed to establish her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

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