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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: DEC 22 2006

MSC 02 243 65597

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. Any further inquiry must be made to that office.

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 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, 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 provides copies of previously submitted documents along with additional documents in support of the appeal.

It is noted that the director, in denying the application, did not address the evidence furnished initially, and in response to the Notice of Intent to Deny, and did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). As such, the documentation submitted throughout the application process will be considered on appeal.

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 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).

According to the director, in her Notice of Intent to Deny dated October 1, 2004, the applicant had submitted sufficient evidence to establish she resided unlawfully in the United States from 1986 through May 4, 1988. At issue in these proceedings is the documentation submitted by the applicant in an effort to establish continuous residence prior to 1986. The director advised the applicant that the affidavits prior to 1986 did not contain sufficient information and corroborative documents and, thus, lacked probative value.

Here the submitted evidence is not relevant, probative and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through 1985, the applicant provided the following evidence throughout the application process:

- A letter dated November 1, 1990 from [redacted] of Thousand Oaks, California, who indicated that he has been personally acquainted with the applicant and her family since the early 1980s. The affiant asserted that the applicant's mother was employed as a housekeeper and that the applicant would often accompany her and assisted in the housekeeping duties. The affiant asserted that for the last ten years, the applicant and her sister have cleaned his laundry and the entire family cleaned his restaurant every five or six weeks from 1982 to 1985.

- A letter dated November 3, 1990 from a brother [redacted] of Simi Valley, California, who indicated that the applicant resided in his home, [redacted] Thousand Oaks from June 1982 to October 1986. The affiant asserted that the applicant "was helping us out by babysitter, in exchange I was supporting her."

- An affidavit notarized May 16, 2002 from [redacted] who indicated the applicant resided with him and his family at [redacted] from November 5, 1981 through June 1984.

- A letter dated November 2, 1990 from [redacted] of Thousand Oaks, California, who indicated the [s]he has been acquainted with the applicant for approximately ten years.

- A letter dated November 2, 1990 from [redacted], general manager of [redacted] at [redacted] Thousand Oaks, who attested to the applicant's residence at Apt. 219 since February 1980.

- An undated letter from [redacted] manager of [redacted] who attested to applicant's residence at [redacted] for six months in 1985 and for five years commencing in 1987.

- A letter dated April 26, 2002 from [redacted] owner of Sooki's Oriental Cuisine in Thousand Oaks, California, who indicated that the applicant was employed as a cook from June 1984 to September 1986. The affiant attested to the applicant's [redacted] residence at [redacted] Avenue, Apt. 116 during this employment period.

- A letter dated May 6, 2002 from [redacted] of Newbury Park, California who indicated the applicant was a patient of his in Oxnard, California from 1984 to 1990. [redacted] asserted that his records were transferred to the custody of another physician who took over his practice.

In response to the Notice of Intent to Deny, the applicant submitted copies of documents previously submitted along with the following:

- An affidavit notarized October 11, 2004 from [redacted], former manager of the Best Western Oaks Lodge in Thousand Oaks, California, who indicated that the applicant was in his employ as a guest room service attendant within the housekeeping department from 1983 to 1990.

- An affidavit notarized October 9, 2004 from a brother, [redacted] of Thousand Oaks, California, who indicated that the applicant resided with him at [redacted] from November 1, 1981 through June 1984.

On appeal, counsel submits:

- A social security statement dated April 1, 2004 from the Social Security Administration, which reflected the applicant's earnings since 1986.

- A letter dated November 15, 2004 from [redacted] of St. Paschal Baylon Catholic Church in Thousand Oaks, California, who indicated that the applicant has been a member of the church since June 1985.

- An affidavit from [redacted] who reiterates the applicant's employment as a cook at Sooki's Oriental Cuisine from June 1984 to September 1986. The affiant asserts that this information is based on his knowledge as official company records no longer exist.

- An affidavit notarized November 18, 2004 from [redacted] of Thousand Oaks, California, who indicated that she has known the applicant since 1983. [redacted] asserted that she was a co-worker of the applicant at the Best Western Oaks Lodge from 1983 to 1992.

- An additional affidavit notarized November 18, 2004 from [redacted] who reiterates the applicant's employment as a guest room service attendant at the Best Western Oaks Lodge from 1983 to 1990 while he was the manager. [redacted] asserts that Best Western Oaks Lodge has changed ownership and company records for the period in question no longer exist.

- An undated letter from [redacted] apartment manager of [redacted] now [redacted] who indicates that he has known the applicant and her family since the beginning of his employment in 1983. [redacted] attests to the applicant's residence at [redacted] and [redacted] from 1984 to 1992. [redacted] provides copies of payment records. It is noted that that it appears that the payment records were amended to include the applicant's name.

Counsel also provided an affidavit from the applicant in which she states, in part:

> That when I came to the U.S. I went to live with my brothers, [redacted] at [redacted] Thousand Oaks, California 91360. That my cousins (the Casanovas) and my aunt were living in the same apartment complex. That after I came into the U.S. I did not go to school. That I worked with my family cleaning homes, and businesses, in order to earn money and support ourselves. That I lived with my brothers in [redacted] until June of 1984, at which time I moved into [redacted] with my fiancé, [redacted], who is now my husband. That I lived with my husband in [redacted] until 1992.

The statements of counsel have been considered; however, the AAO does not view the documents submitted as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through 1985 as inconsistent information has been provided. Specifically:

1. The affidavits from [redacted] and [redacted] attested to the applicant's employment since "1983" at Best Western Oak Lodge. The applicant, however, claimed on her Form I-687 application to have been employed at Best Western Oak Lodge since "1986."

2. In his initial statement [redacted] claimed that the applicant resided with him from June 1982 to October 1986. However, in a subsequent statement [redacted] amended his claim to indicate that the applicant resided with him from November 5, 1981 to June 1984.

3. It is unclear if [redacted] and [redacted] are one and the same person. Nevertheless, the letters provided raise questions to their credibility. [redacted] attested to the applicant's residence at [redacted] since February 1980. However, [redacted] attested to the applicant's residence at [redacted] from 1984 to 1992.

4. The letter from [redacted] contradicts the affidavits provided by the applicant's brothers, [redacted] and [redacted] as the affiant attested to the applicant's residence at [redacted] for only six months in 1985 and then again in 1987.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statements from [redacted] and Mr. [redacted] have been submitted to resolve their contradicting documents. As such, the documents from these affiants including [redacted] have little probative value or evidentiary weight. Furthermore, the applicant did not claim on her Form I-687 application to have resided at either apartment during the requisite period.

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).

Given the credibility issues arising from the documentation provided by the applicant along with the affidavits which do not meet basic standards of probative value, it is determined that the applicant has not met her burden of proof. 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.

Finally, the record reflects that on April 19, 1996 the applicant was convicted of violating section 484 (a) PC, petty theft and section 529.5(c) PC, possession of deceptive government document, both misdemeanors. On December 5, 2003, the convictions were expunged in accordance with section 1203.4 PC. Case no. [redacted]

Under the statutory definition of "conviction" provided at Section 101(a)(48)(A) of the Act, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

In addition, in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), a more recent precedent decision, the Board of Immigration Appeals (BIA) found that there is a significant distinction between convictions vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships. The BIA reiterated that if a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the alien remains "convicted" for immigration purposes.

Pursuant to the above precedent decisions, no effect is to be given to the applicant's expungements. While these convictions do not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a), the AAO notes that the applicant does has two misdemeanor convictions.

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