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U.S. Department of Homeland Security
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Washington, D.C. 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: LOS ANGELES Date: SEP 11 2006

MSC 02 240 66969

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: Self-represented

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, the applicant asserts that she has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant submits additional documentation along with copies of previously submitted documents in support of her appeal.

It is noted that the director, in denying the application, 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).

Here, the submitted evidence is not 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:

- A 1988 wage and tax statement and several earnings statements from [redacted] in Santa Ana, California for the periods ending February 12, 1988 through November 25, 1988.
- An affidavit notarized February 22, 1990 from [redacted] of Whittier, California, who attested to the applicant's residence in Whittier, California from 1984 to 1987. Ms. [redacted] based her knowledge on having known mutual friends.
- An affidavit notarized February 22, 1990 from [redacted] of Santa Ana, California, who attested to the applicant's residence in Santa Ana, California from 1982 to 1984. Mr. [redacted] based his knowledge on having known mutual friends.
- An affidavit notarized March 23, 1990 from [redacted] of Santa Ana, California, who attested to the applicant's residence in Santa Ana, California from January 1981 to December 30, 1982. Ms. [redacted] based her knowledge on having known mutual friends.
- A receipt dated April 24, 1988 from [redacted] s of California, which listed the applicant address as [redacted], Santa Ana, California.
- An application receipt dated April 21, 1988 from the California Department of Motor Vehicles for an identification card.
- A copy of an uncertified 1988 federal tax return.
- An affidavit notarized August 23, 2004 from [redacted] of Santa Ana, California, who attested to the applicant's residence in Santa Ana, California from November 1982 to October 1994. Ms. [redacted] based her knowledge on having been friends with the applicant since that time.

The applicant also submitted several receipts; however, the receipts cannot be considered as the applicant's name was not listed.

The director issued a Notice of Intent to Deny dated August 30, 2004, advising the applicant that the affidavits submitted did not contain sufficient information and corroborative documentation for the proclaimed years. The applicant was also advised that the affidavits had raised questions to their validity as she did not claim any residence during the requisite period on her Form I-687 application, but yet she submitted affidavits from affiants attesting to her residence since 1981. In addition, on her Form I-687 application, the applicant listed an absence from the United States from May 5, 1987 to May 24, 1987. However, at the time of her interview, the applicant indicated she was only absent from the United States in 1989.

The applicant, in response, asserted that she has resided in the United States for over 22 years, but was unable to obtain any additional documentation to establish her residence during the requisite period. The applicant submitted an affidavit from [redacted] of Moreno Valley, California, who indicated that he has known the applicant since February 28, 1982. The applicant also submitted an affidavit from [redacted] of Santa Ana, California, who attested to the applicant's residence in Santa Ana from April 1982 to October 1994.

As noted by the director, the applicant had previously indicated on her Form I-687 application that she did depart the United States in 1987. As such, any possible discrepancy regarding the applicant's amended statement at the time of her interview can be deemed to be minor and not prejudicial to the applicant's claim.

On appeal, the applicant asserts that as a result of her age at the time of her entry and her undocumented immigration status, she is unable to submit contemporaneous documents. The applicant contends that because she is unable to provide addresses does not disprove that she was not in the United States during the period in question.

While 8 C.F.R. § 245a.2(d)(3) sets forth specific criteria which affidavits of residence from employers and organizations should meet to be given substantial evidentiary weight, we look to *Matter of E-- M--*, *supra*, for guidance in determining the appropriate criteria for affidavits from other third party individuals.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his or her knowledge for the testimony provided. The AAO, however, does not view the affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982.

[redacted] in her affidavit, indicated that the applicant resided in "Whittier," California from 1984 to 1987; however, [redacted] and [redacted] attested to the applicant's residence in "Santa Ana," California from 1982 to 1994. No explanation has been provided for this contradiction. Except for Ms. [redacted], none of the affiants attested to the applicant's residence prior to January 1, 1982. In addition, all the affiants attested to the applicant's residence in California, but provided no actual address for the applicant.

The statements of the applicant on appeal regarding her inability to produce additional documentation due to her age and illegal immigration status at the time of her entry have been considered. As the applicant was 15 years of age at the time she allegedly entered the United States, the lack of contemporaneous documents is therefore not found to be unusual. However, as she was a minor, it is conceivable that the applicant would have been residing with an adult during the period in question. The applicant's failure to provide the name of the individual she resided with or the address of residence during the requisite period raises serious questions about the credibility of her claim and the authenticity of the affidavits submitted.

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).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." *Black's Law Dictionary* 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Based on the evidence in this case, the AAO determines 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).

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