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

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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: DALLAS Date: AUG 30 2007
MSC 02 061 60383

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, Dallas, Texas, and is now before the Administrative Appeals Office 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 director did not place any weight on the evidence submitted to support the applicant's continuous residence in the United States during the requisite period. Counsel asserts that the applicant provided a credible explanation regarding her situation and the circumstances surrounding her entry into the United States.

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 notarized affidavit from [redacted] of Plano, Texas, who indicated that the applicant was employed as a housekeeping from 1985 to 1990. The affiant asserted that the applicant was paid $180.00 per week including room and board.
- An affidavit notarized November 26, 1990, from a brother [redacted] of Dallas, Texas, who attested to the applicant's residence in the United States since June 1981 and that he has taken "full responsibility" of the applicant.
- An additional affidavit notarized November 6, 2001, from [redacted] who indicated that the applicant resided "with me and my family during the period of 1981 to 1992 until she married on June 6, 1992."
- An affidavit notarized November 26, 1990, from [redacted] of Duncanville, Texas, who indicated that the applicant was in his employ as housekeeper and babysitter from 1981 to 1985. The affiant asserted that the applicant was paid $50.00 per week including room and board.
- An additional affidavit notarized October 19, 2001, from [redacted], who indicated that he has known the applicant since 1981 and has kept in touch with the applicant over the years.
- An additional affidavit notarized April 26, 2003, from [redacted], who reaffirmed the applicant's employment as a housekeeper and babysitter from August 1981 to May 1985.
- A notarized affidavit from [redacted] of Dallas, Texas, who attested to the applicant's character and indicated that he has known the applicant for many years specifically, during the time he was a deacon for Holy Trinity Catholic Church.
- A notarized affidavit from [redacted] and [redacted] of Dallas, Texas, who indicated that they have known the applicant since 1981 and have maintained a friendship throughout the years.

On December 12, 2003, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavit from [redacted] raised questions of credibility as she was only nine years of age at the time of employment and the remaining affidavits submitted did not contain sufficient information and corroborative documents.

The applicant, in response, indicated, in part:

> In 1981 I cam to the United States to join my brother [redacted] For a short time we stayed with our Aunt [redacted] and Uncle [redacted] in Houston. Then we moved to Dallas where my brother moved in with some of his co-workers. I went to live with the [redacted] Family during that time. I did not attend school, really because I was afraid. [redacted] tried to get me to go to school, but they did not force me to and I did not go, therefore I have no school records from this time.
>
> As I got older, the [redacted] paid me for helping with housework and helping to care for their children. I maintained contact with them for several years even after I got married and had children of my own.

The applicant provided an affidavit from her brother [redacted], who indicated at the time the applicant arrived in the United States, he and the applicant stayed, for short period of time, with their Aunt [redacted] and Uncle in Houston. They subsequently moved to Dallas where he moved in with co-workers he had known in Houston. Because there was no one to look after the applicant, through friends they met the [redacted] family and arrangements were made for the applicant to reside with them. The brother indicated, "[t]he [redacted] family helped my sister and I out. They did not charge her rent, she lived with them for several years and, as she got older, was able to help them by taking on more and more responsibility around the household and assisting them in caring with their children."

Counsel, in response, asserted the relationship between the applicant and [redacted] "was not truly an employer/employee or master/servant relationship, but rather, that of a family who took in a young girl who did not have a family of her own. And who, eventually, provided her the opportunity to earn money by taking on housekeeping chores and babysitting their children."

The director, in denying the application, noted that the explanations provided were insufficient to overcome the denial of the application. On appeal, counsel argues that the director's decision ignores substantial and verifiable evidence the applicant provided to establish her presence during the requisite period. Counsel asserts that due the applicant's young age, she accumulated very little primary documentation of her presence in the United States.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--, supra.* In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

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 knowledge for the testimony provided. The statements issued by counsel, the applicant and the applicant's brother have been considered; however the applicant has presented contradictory and inconsistent documents, which undermines her credibility.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the inconsistencies. However, no statement from [redacted] has been submitted to corroborate the statements of the applicant and her brother.

In addition, the applicant's brother has also provided conflicting statements of which no explanation has been provided. In his affidavit notarized November 6, 2001, [redacted] indicated that the applicant resided with him and his family from 1981 to 1992. The affiant makes no mention of the applicant residing with [redacted]. The affiant also indicated that the applicant resided with relatives in Houston upon her arrival in the United States. The applicant, however, did not claim any residence in Houston on her Form I-687 application.

The affidavit from [redacted] and [redacted] has little probative value or evidentiary weight as the affiants indicated that they have known the applicant since 1981, but provided no address for the applicant during the period in question. Further, the affiants failed to indicate how they met the applicant and how frequently they saw her.

The affidavit from [redacted] also has little probative value as the applicant indicated on her Form I-687 application that she was not affiliated with Holy Trinity Catholic Church until December 1989. It is noted that the applicant provided a letter dated November 17, 1990, from a representative of Holy Trinity Catholic Church, who indicated the applicant became a registered member of the parish in December 1989.

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). Given the credibility issues arising from the documentation provided by the applicant, 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.

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