U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: DALLAS Date: DEC 20 2007
MSC 03 235 60983

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, or if your case 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, Dallas, 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 since before January 1, 1982 through May 4, 1988. Specifically, the director determined that the applicant had failed to submit sufficient evidence to establish her presence in the United States prior to 1986, and noted that unresolved discrepancies in several documents as well as her applications for asylum and suspension of deportation proceedings raised questions regarding the credibility of the application.

On appeal, counsel submits a detailed brief and claims that the notary public retained by the applicant submitted fraudulent documents. Additionally, counsel claims that she was wrongly advised to put an incorrect date of entry on her asylum application. In conclusion, counsel asserts that the applicant provided sufficient valid documentation of her presence prior to 1986 to warrant approval of her application.

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).

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).

The AAO concurs with the director's finding that the applicant submitted sufficient evidence to establish continuous residence and physical presence in the United States subsequent to 1986. The question at issue, therefore, is whether the applicant established her continuous unlawful residence in the United States from before January 1, 1982 through 1985.

In the affidavit for class membership, which she signed under penalty of perjury on March 22, 1991, the applicant stated that she first arrived in the United States in October 1980, when she crossed the border without inspection. On her Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury, the applicant provided no information regarding her residences prior to 1986. With regard to employment history, she provided the following information:

October 1980 to April 1983:
April 1983 to December 1985: [redacted]

The director noted that the record contained Form EOIR-40, Application for Suspension of Deportation, as well as Form I-589, Application for Asylum and Withholding of Removal. Form EOIR-40 indicates that the applicant first entered the United States in March 1986. Form I-589, signed under penalty of perjury on February 8, 1997, claims that she first entered the United States in February 1986.

Noting the discrepancies in these documents when compared to the claim of entry made in her affidavit for class membership, the director issued a request for additional evidence on January 1, 2005. The

director also noted that a letter submitted by Rev. [redacted], Associate Pastor at St. [redacted] Catholic Church, could not be verified and appeared to be fraudulent. The applicant was afforded the opportunity to submit additional evidence in support of the application.

In response, counsel for the applicant submitted a letter dated February 8, 2005 accompanied by supporting documentary evidence. The following evidence was furnished:

(1) Affidavit dated November 15, 2003 from [redacted] claiming the applicant either worked for her as a housekeeper or worked with her housekeeper from 1984. The wording of the affidavit is unclear, and no additional information, such as the frequency of their contact or when her employment as a housekeeper terminated is provided.

(2) Affidavit dated November 15, 2003 from [redacted] claiming that she knew the applicant since 1980 because she was her neighbor. She omits the address at which she knew her or the origin of the information to which she attested.

(3) Second letter from Rev. [redacted], Associate Pastor at St. [redacted] Church, dated November 10, 2003, claiming that the applicant was a parishioner from 1980 to 1983. It is noted that the signature differs from the first letter submitted on church letterhead. This letter, like the first one dated March 20, 1991, claims that the applicant resided at [redacted] California during this time.

(4) Affidavit dated March 14, 1991 from [redacted] claiming that the applicant worked for her as a babysitter from October 1980 to April 1983. She further claims that the applicant lived with her at [redacted] in Anaheim during this time. This claim of residence directly contradicts the claims set forth in the letters from St. [redacted] Catholic Church.

(5) Affidavit dated March 14, 1991 by [redacted], claiming that the applicant worked as her live-in housekeeper from April 1983 to December 1985. The record indicates that Ms. [redacted] is the daughter of Ms. [redacted]

(6) Letter from Rev. [redacted], Pastor of St. Boniface Catholic Church, claiming that the applicant was a member of the church between April 1983 and December 1985, during which time she resided at [redacted] Anaheim. He further claimed she remained a member from March 1986 to December 1986 when she resided at [redacted], and from December 1986 to February 1988 when she resided at [redacted]

In addition to submitting numerous documents subsequent to 1986, counsel also submitted a "Memo of Hospital Out-Patient Number, which allegedly represents services rendered to the applicant on September 9, 1981. No identifying information regarding the provider of these services is submitted.

Furthermore, in addressing the director's questions regarding the conflicting claims in the record, counsel argued that with regard to the letter from St. [redacted], counsel argued that the tenure of Rev. [redacted] was not in question, but rather the inclusive dates of the applicant's membership were the points to be considered. Regarding the claims on Forms EOIR-40 and I-589 that the applicant did not enter the United States for the first time until March 1986 and February 1986, respectively, counsel contends that

these misrepresentations were the result of clerical errors and the applicant's limited understanding of English.

The director denied the application on June 7, 2005, noting that while the evidence in the record supported a finding that the applicant was present in the United States subsequent to 1986, there was insufficient evidence to show that she was unlawfully present in the United States from before January 1, 1982, the beginning of the qualifying period, through 1985. Although the director noted the applicant's numerous affidavits of acquaintance and letters from churches, the director noted there was no evidence of the applicant's entry prior to January 1, 1982, insufficient evidence of her continued presence in the United States through 1986, and conflicting evidence that had not been resolved.

On appeal, counsel for the applicant asserts that the applicant satisfied her burden of proof by a preponderance of the evidence, and specifically alleges that the director erred in failing to consider the affidavits and employment letters in the record, particularly since he alleges that the applicant was paid on a cash basis during this period. Counsel relies heavily on *Matter of E-- M-* in support of the applicant's eligibility. 20 I&N Dec. 77 (Comm. 1989). Upon review, the AAO concurs with the director's decision.

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. at 79-80. In evaluating the evidence, *Matter of E— M--* also stated that "[t]ruth is to be determined not by the quality 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 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.

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

Although the applicant claims she entered the United States in October 1980, she later claims on Forms EOIR-40 and I-589 that she did not enter the United States for the first time until early 1986. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In an attempt to clarify this conflicting information, counsel explained in the February 8, 2005 response to the NOID that these dates were the result of clerical error, and were uncorrected by the applicant due to

her limited command of the English language. On appeal, however, counsel provides an entirely new argument, and claims that the applicant was wrongly advised to put an incorrect date on these forms by a person identified as "Mr[redacted]" a law student.[1] Counsel also asserts that numerous other documents, including affidavits from [redacted] and [redacted] letters from Rev. [redacted] and Rev. [redacted], and the hospital out-patient record, were all fraudulent as a result of the applicant's hiring of a dishonest notary who alleged prepared these documents and had the applicant unknowingly to the Service in a sealed envelope.

In addition to weakening the applicant's claims of eligibility, these statements on appeal undermine the credibility of counsel. The very documents, which counsel admits are fraudulent, were relied upon by counsel as proof of the applicant's eligibility in the response to the NOID filed on February 8, 2005. In that letter, counsel never mentions the above, and urges CIS to rely on most of these documents. Furthermore, counsel claimed that the incorrect dates provided by the applicant were the result of a clerical error, yet on appeal claims they were the result of wrong advice which the applicant knowingly accepted. Doubt cast on any aspect of the petitioner'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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

As a result, the credibility of all documentation submitted in support of this application is seriously undermined. Furthermore, the applicant for the first time on appeal alleges that she was the victim of fraud, yet was fully prepared to rely on these fraudulent documents prior to the denial of the application. It appears that the only potentially credible documentation left to examine are the affidavits of Ms. [redacted] and Ms. [redacted], on which the applicant relies to establish her presence in the United States.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Although numerous affidavits of acquaintance have been submitted, there are several unresolved inconsistencies contained therein which the applicant failed to clarify. These inconsistencies 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.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

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[1] It is noted, however, that Form I-589 was prepared by [redacted] The claim that a Mr. [redacted] wrongly advised the applicant is suspicious and raises questions with regard to the credibility of the applicant's evidence.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

These affidavits fall far short of meeting the above criteria. While they affirm that the applicant worked for them for defined periods and lived with them during this time, they fail to provide any additional details, such as when and how they first met the applicant. Furthermore, an affidavit by the applicant's daughter, submitted on appeal, also lacks sufficient information to establish the applicant's continuous unlawful residence in the United States. These brief and somewhat generic statements fail to conform to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3). When combined with the numerous unresolved inconsistencies contained in the record, the applicant fails to satisfy her burden of proof in these proceedings.

Given the absence of contemporaneous documentation, the reliance on affidavits which do not meet basic standards of probative value, and the serious credibility issues regarding a majority of the evidence contained in the record, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through 1984. Therefore, 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.