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

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FILE: [redacted] Office: NEW YORK Date: FEB 27 2007

MSC 02 016 60679

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 on appeal. The appeal will be dismissed.

The 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.

On appeal, counsel states that the director's decision constituted an abuse of discretion and is reversible error. Counsel asserts that there was no adverse determination about the applicant's credibility as to her demeanor, and that the decision should not have been based solely on the lack of documentation "justifiable discarded" years earlier. Counsel submitted no additional documentation in support of the 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. Section 1104(c)(2)(B) of the LIFE Act; 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 petitioner 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.

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).

On a form to determine class membership, the applicant stated that she first entered the United States in 1980. On her Form I-687, Application for Status as a Temporary Resident, the applicant stated that her only absence from the United States during the qualifying period occurred from July 10 to August 14, 1987. The applicant also stated that she lived at the following addresses during the requisite period: from

November 1980 to April 1986 – [redacted] in Staten Island, New, York, and from April 1986 until she completed the Form I-687 – [redacted] in Staten Island. The applicant further stated that from 1981 to 1986, she was self-employed. The applicant did not state the nature of her self-employment. She also stated that she worked at Buona Casa from March to December 1987 and at Cangianos in Staten Island from December 1987 to November 1989.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A June 18, 2004 notarized statement from [redacted]H., in which she stated that she has known the applicant all of her life and that the applicant had been living in the United States since March 1980. [redacted]a stated that she shared an apartment with the applicant for two years on York Avenue in Staten Island. The applicant submitted no documentary evidence that either she or Ms. [redacted] lived at the stated address during the time period indicated.

2. A June 20, 2004 notarized statement from [redacted], in which he certified that he has known the applicant all of his life, and that he picked the applicant up at the airport when she arrived in the United States in March 1980.

3. A June 17, 2004 notarized statement from [redacted]a, in which she stated that she has known the applicant since November 1980. [redacted] did not indicate the nature of her relationship with the applicant or that the applicant resided in the United States during the period of their acquaintance.

4. A February 15, 1991 letter from [redacted] of the Immaculate Conception Rectory in Staten Island. [redacted] stated the he knows the applicant and that she had lived in Staten Island since 1980. [redacted] did not state the basis of his knowledge of the applicant and did not indicate that he was basing his statements on her membership or attendance at the church. The district office was unable to contact [redacted] to verify the information that he provided.

5. A November 3, 1990 affidavit from [redacted], in which she stated that, of her personal knowledge, the applicant had resided in Staten Island from October 1981 until the date of the affidavit. [redacted] stated that she knew the applicant "socially." In a September 18, 2004 notarized statement, [redacted]a certified that she has known the applicant since 1982. [redacted] did not state the circumstances of, or her ability to date, her initial acquaintance with the applicant. Further, Ms. [redacted] did not state the basis of her knowledge of the applicant's 1981 residence, as her acquaintance with the applicant dates only from 1982.

6. A September 13, 1990 affidavit from [redacted], in which he stated that to his personal knowledge, the applicant had lived in New York since 1981, and that he knew her from work and from church. However, in a September 18, 2004 notarized statement [redacted] stated that he has known the applicant only since 1983. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

7. A May 5, 1990 affidavit from [redacted], in which he stated that, to his personal knowledge, the applicant had lived in New York since 1981 and that he knew her from church and in the neighborhood.

8. An undated letter from Auxiliary Services for High School on Staten Island, certifying that the applicant attended the institution from September 1983 to March 1987.

9. A July 8, 1987 Eastern Airlines ticket stub for the applicant for a flight from New York to Bogotá. An undated letter from ITP Travel, LTD certified that the applicant purchased a ticked on Eastern Airlines on July 10, 1987.

10. Copies of pay stubs for the applicant dated May through August 1987. The pay stubs do not reflect an employer.

11. A Form SSA-3365-C1, Request to Employee for Social Security Information for the year 1987 and listing the employer as 1449 Richmond Terrace Corporation. The applicant's address is shown as [redacted] in Staten Island. We note that the applicant did not claim to work for this company or live at this address at the time stated.

12. A copy of a November 12, 1987 money order receipt showing the applicant as the purchaser with an address in Staten Island, New York.

13. A copy of a 1987 Form W-2, Wage and Tax Statement, issued to the applicant by Buona Casa Fashions in Staten Island.

14. An October 27, 1989 letter from [redacted] of Cangianos, in which he stated that he had employed the applicant since January 10, 1988. The district office was unable to verify this employment on April 18, 1991. The record includes a copy of a Form W-2 issued by Louis Cangiano, Inc. for the year 1988. The address is listed as [redacted] in Staten Island. The record does not establish that Louis Cangiano, Inc. and Cangianos are the same company. Further, the address for [redacted] is listed on Mr. [redacted] letterhead as [redacted]. The applicant submitted no evidence to explain these inconsistencies. *Matter of Ho*, 19 I&N Dec. at 591.

The record contains copies or partial copies of Forms 1040, U.S. Individual Tax Returns. However, some of the documents have been altered (e.g., the years 1981 and 1982 are handwritten over another, more recent year), and there is no evidence that they were ever filed with the Internal Revenue Service (IRS). The record also contains copies of Forms 4506-T, Request for Transcript of Tax Return, indicating that the applicant requested copies of her tax returns and Forms W-2 for the years 1983 through 1988. The Forms 4506-T indicate that the IRS provides information on returns for the current year and the three immediate years prior. An August 19, 2004 response indicated that the IRS does not have copies of Forms W-2 prior to 1993. Counsel asserts on appeal that because of the IRS limitations, the applicant "could not possibly obtain tax records substantiating her presence in the United States from 1982 to 1987." However, the IRS response clearly advises the applicant that information on returns prior to 1989 could be obtained from the Social Security Administration. The record does not reflect that the applicant attempted to obtain this information from the Social Security Administration.

While affidavits in certain cases can effectively meet the preponderance of evidence standard., the unresolved inconsistencies in the applicant's documentation brings into question the credibility of the statements. While the applicant submitted sufficient documentation establishing her presence in the United States in 1987, without corroborating documentary evidence, the affidavits fail to establish by a preponderance of the evidence that the applicant was present and residing in the United States prior to January 1, 1982.

Accordingly, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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