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

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[redacted]

FILE: [redacted] Office: BOSTON (HAR) Date: JAN 11 2007

MSC 02 229 61398

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, Boston Massachusetts, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further action and consideration.

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 argues that the director issued a boilerplate denial, which failed to discuss or evaluate the evidence presented. 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.

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).

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

- A letter dated February 1, 1991 from [redacted], principal of Flatbush Elementary & Grammar school in Brooklyn, New York. [redacted] indicated that the applicant has been employed as an instructor since September 1986.

- An undated letter from [redacted] of Hartford, Connecticut, who indicated that the applicant was his tenant during the fall of 1986 at [redacted], Hartford, Connecticut.

- A letter dated December 15, 2001 from [redacted] of Royal Palm Beach, Florida, who indicated that she has known the applicant since 1967 and attested to the applicant's 1980 entry into the United States. [redacted] asserted during the time she resided in Connecticut she was a co-worker of the applicant, and she has remained in contact with the applicant since that time.

- An affidavit notarized August 29, 1990 from [redacted] of Miami, Florida, who indicated that she has known the applicant since 1982. [redacted] attested to the applicant's character.

- An additional affidavit notarized December 12, 1990 from [redacted], who indicated that the applicant was in her employ as a babysitter for two days a week from July 26, 1985 to January 12, 1987.

- An affidavit notarized December 12, 1990 from [redacted] of N. Miami Beach, Florida, who indicated that the applicant "lived with me visiting my brother, during the years 1981 to 1986." [redacted] asserted that to the best of her knowledge, the applicant has continuously resided in the United States since 1981 and have resided in New York, Connecticut and Dade County, Florida.

- A letter dated June 20, 1985 from [redacted], assistant manager of Ocean Palm Motel in Miami Beach, Florida, who indicated that the applicant was employed from 1981 to 1985 as his housekeeper.

- A judgment for the dissolution of marriage from the state of Connecticut dated February 19, 1988. The judgment indicates that the applicant's marriage occurred on July 31, 1982 in Kingston, Jamaica and the dissolution of marriage was filed on October 13, 1987.

- A letter dated September 11, 1990 from [redacted] an administrative assistance at Oak Hill School in Hartford, Connecticut, who indicated that the applicant was employed as a full–time assistant teacher from January 12, 1987 through February 1, 1988.

- A letter dated February 4, 2002 from [redacted], human resource coordinator of The Connecticut Institute for the Blind/Oak Hill, who indicated that the applicant was employed as a part-time assistant teacher from January 12, 1987 through November 29, 1987.

- A photograph of the applicant and her 2nd grade students for the 1985-1986 academic year at the Flatbush Academy.

- A payment statement dated April 30, 1986 from the Flatbush Academy regarding the applicant's payment for the summer of 1985.

- A photocopy of a New York Driver License issued on May 18, 1987 and reflecting an at [redacted], Rego Park, NY 11368.

It is noted that the applicant did not list the address indicated on her New York Driver License on her Form I-687 application. Nevertheless, evidence in the record reflects that Citizenship and Immigration Services has verified the applicant's employment with [redacted] and [redacted] Accordingly, the applicant submitted evidence, which tends to corroborate her claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

Finally, a review of the record reveals that the applicant indicated in an addendum to her LIFE application the following "approximate dates" of her absences from the United States since May 1981:

Departure 7/82
Returned 9/82
Departure 8/83
Returned 8/83

Departure 5/84
Returned 6/84
Departure 6/85
Returned 9/85
Departure 8/87
Returned 8/87
Departure 4/88
Returned 5/88

At a LIFE Act interview, the applicant gave conflicting dates for her absences from the United States and said she departed the United States in June 1984 and did not return until September 1984. This prolonged absence was not addressed by the director in his Notice of Intent to Deny. Accordingly, the case is remanded for the issuance of a Notice Intent to Deny addressing this matter and for the entry of a new decision in accordance with the foregoing. If the new decision is adverse, it shall be certified to this office.

It is noted that the applicant claimed on her Form I-687, signed October 5, 1990, to have worked at the Flatbush Academy from January 1989 to September 1990. She also submitted two letters from this employer. The first letter dated September 26, 1990 and signed by [redacted], states that the applicant worked at Flatbush Academy from January 1989 until September 24, 1990. A letter dated February 1, 1991 from [redacted] indicates that the applicant had been working at Flatbush Academy from September 1986 to the present. The applicant also submitted a photograph of herself and a second grade class for the 1985-1986 academic year. It is incumbent upon the petitioner 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, 591-92 (BIA 1988). 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). In a Notice of Intent to Deny, the director shall also address this matter.

ORDER: The matter is remanded for further action and consideration pursuant to the above. If the decision is adverse to the applicant, the matter will be certified to the AAO.