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

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUN 05 2007

MSC 02 016 62403

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 (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, 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. Counsel provides additional affidavits in support of the appeal.

It is noted that counsel's Freedom of Information Act request was complied with on March 31, 2006.

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 her Notice of Intent to Deny issued on June 28, 2004, the director noted that the applicant had only submitted affidavits to establish her continuous residence since before January 1, 1982 to 1984. The applicant was advised that the submission of affidavits alone would not always be sufficient to support her claim.

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through 1984, the applicant provided the following evidence:

- A notarized affidavit from of Los Angeles, California, who attested to the applicant's Los Angeles residence since February 1981. The affiant asserted that she used to be a neighbor and once a week she still visits the applicant's home.
- A notarized affidavit from [redacted] of North Hills, California, who attested to the applicant's North Hollywood residence since September 1981. The affiant asserted that she met the applicant at church and sees the applicant every Sunday since that time.
- A notarized affidavit from [redacted] of Sylmar, California, who attested to the applicant's North Hills residence since May 1981. The affiant asserted that the applicant is a good friend of the family and has remained in contact with her since that time.

On appeal, counsel submits:

- A notarized affidavit from the applicant's brother, [redacted], of Los Angeles, California, who attested to the applicant's residence in the United States since February 1981. The affiant asserted the applicant resided with him at [redacted], Los Angeles from February 1981 to 1984. The affiant further asserted that he enrolled the applicant in [redacted] Junior High School and [redacted] Adult School while she was residing with him.
- An additional notarized affidavit from [redacted], who indicated that she met the applicant through her brother, [redacted], in February 1981, and that the applicant was in her employ as a housekeeper, once a week, from March 1981 to November 1984.
- A notarized affidavit from [redacted] of Bell, California, who indicated that he first met the applicant in March 1981 at [redacted] in Los Angeles and has remained in contact with her since that time.
- Affidavits in the Spanish language with English translations from the applicant's sisters, [redacted] and [redacted] of San Salvador, El Salvador who attested to the applicant's departure in February 1981 to reside with their brother, [redacted], in Los Angeles, California. The affiants also attested to the applicant's two departures from the United States:1984 for 30 days and around 1986 due to their mother's health.

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 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 through 1984, as inconsistent and contradicting statements have been submitted. Specifically:

1. Ms. [redacted] and Mr. [redacted] attested to the applicant's residence in North Hollywood and North Hills, respectively. However, on her Form I-687 application, the applicant claimed to have resided in Sun Valley during the period in question.
2. Ms [redacted] attested to the applicant's residence in Los Angeles, California and to her employment as a housekeeper from 1981 to 1984. However, on her Form I-687 application, the applicant did not claim any residence in Los Angeles until April 1986, and did not claim any employment during this period.
3. Mr. [redacted] attested to the applicant's residence in the United States since 1981, but provided no address for the applicant.
4. The applicant's failure to disclose her 1984 departure from the United States diminishes her credibility to have resided in the United States prior to 1985.
5. Mr. [redacted] asserted that the applicant resided with him from February 1981 to 1984 at [redacted] Los Angeles. The applicant, however, did not claim this residence on her Form I-687 application. No evidence has been submitted to support Mr. [redacted] assertion that he enrolled the applicant in [redacted] Junior High School and [redacted] Adult School during the period in question.

Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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).

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.