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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FILE: [redacted] Office: LOS ANGELES Date: JUN 26 2007

MSC 02 240 65994

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 sustained.

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 copies of previously submitted documents in support of the appeal.

It is noted that the director, in denying the application, did not address the evidence furnished 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:

- Affidavits notarized in 1990, from [redacted] of Los Angeles, California, who attested to the applicant's Los Angeles residence since July 1981. The affiant indicated that she met the applicant at church and employed the applicant as a babysitter from July 1981 to December 1987. The affiant also indicated that she and the applicant traveled to Mexico in June 1987.
- An affidavit notarized July 16, 1990, from [redacted] of Los Angeles, California, who attested to the applicant's Los Angeles residence since January 1987. The affiant asserted she was a co-worker of the applicant and has maintained a friendship since that time.
- An affidavit notarized February 14, 2002, from [redacted] of Los Angeles, California, who attested to the applicant's Los Angeles residence since August 1982. The affiant indicated that she met the applicant at Bank of America and has been friends since that time.
- An affidavit notarized February 14, 2002, from [redacted] of Los Angeles, California, who attested to the applicant's Los Angeles residence since February 1983. The affiant indicated that he met the applicant in church and has been good friends since that time.
- An affidavit notarized April 25, 2002, from [redacted] of Los Angeles, California, who indicated that she has been acquainted with the applicant since 1981. The affiant indicated that she and the applicant are both members of the same church and have been good friends since that time.
- An affidavit notarized February 25, 2002, from [redacted] of Los Angeles, California, who attested to the applicant's Los Angeles residence since November 1985. The affiant indicated that she and the applicant attend the same church.
- An affidavit notarized May 2, 2002, from [redacted] of Los Angeles, California, who indicates that [s]he has been acquainted with the applicant since 1985. The affiant indicated that the applicant was a "nearby neighbor in the Highland Park area" and they have remained close friends since that time.
- An affidavit notarized March 7, 20002, from [redacted] of Los Angeles, California, who indicated that she has been acquainted with the applicant since 1987. The affiant indicated that she met the applicant at her yard sale and has maintained a friendship since that time.
- An affidavit notarized November 18, 2004 from [redacted] of Los Angeles, California, who attested to the applicant's Los Angeles residence since July 1981. The affiant indicated that the applicant was employed by his sister [redacted], as a babysitter from July 1981 to December 1987, and resided at his sister's home at [redacted], Los Angeles during this period. The affiant indicated that his sister no longer resides in California and he feels "morally compelled" to corroborate the applicant's employment and residence with his sister. The affiant indicated that he has maintained a friendship with the applicant since July 1981.
- A letter dated June 9, 2004 from [redacted] pastor of Apostolic Assembly of the Faith in Jesus Christ, who indicated that the applicant has been an active member of the church since August 1981 and attested to the applicant's Los Angeles residences at [redacted] from July 1981 to December 1987, and at [redacted] from December 1987 to 1992.

The director issued a Notice of Intent to Deny dated January 5, 2005, which advised the applicant that the affidavits submitted were lacking probative value as they did not contain sufficient information and corroborative documents to support the statements made. The applicant was also advised that on her Application for Employment Authorization dated May 24, 2002, the applicant indicated that she entered the United States in January 1981. However, on her Form I-687 application and class membership questionnaire, the applicant indicated that she departed to Mexico in June 1987. This fact was corroborated by the affidavit from Isaura

Carrera and by the applicant's own statement at the time of her LIFE interview. The director noted that this discrepancy raised questions, which impact the credibility of the applicant's other documents submitted in an effort to establish her claim of residence during the requisite period.

Counsel, in response, asserted that the affidavits submitted were specific and detail oriented and provides additional documents in support of her application. Counsel also asserted, in part:

> As her testimony and evidence submitted indicate she did in fact travel to Mexico in June of 1987. When she came back from Mexico she did not enter the United States but rather returned. The word "entry" and "return" have specific significance in Immigration law and therefore do not raise credibility as to her claim for relief under LIFE legalization.

Counsel submitted:

- An additional letter dated January 22, 2005 from [redacted], who indicated that the applicant has been a faithful economic supporter to the church from 1981 to 1990.
- A notarized affidavit from [redacted] of Fontana, California, who indicated she has been acquainted with the applicant since 1980 in Mexico, and attested the applicant's Los Angeles residence for one week in July 1981 at [redacted]. The applicant also attested to the applicant's employment with [redacted] and to the applicant's Los Angeles residence at [redacted] from July 1981 to December 1987. The affiant asserted that the applicant returned to reside at her home, "and we agreed that she did not have to pay rent for the year 1988. Instead she cleaned my house for one year."
- A photocopy of a photograph of the applicant with a child counsel claims the applicant cared for.

On appeal, counsel asserts that the applicant's "travel to Mexico was brief, casual, and innocent and therefore for entry purposed, her entry into the United States was in fact in January of 1981 and her return from Mexico in 1987 was just that – a return and therefore was not her last entry into the United States."

Pursuant to *Matter of E--M--, supra,* affidavits in certain cases can effectively meet the preponderance of evidence standard, and the director cannot simply refuse to consider such evidence merely because it is unaccompanied by other forms of documents.

The statements of counsel have been considered and are considered to be a reasonable explanation in these circumstances. In this instance, the applicant submitted evidence, which tends to corroborate her claim of residence in the United States during the requisite period. The applicant provided affidavits from individuals, all whom provide their current addresses and/or telephone numbers and indicate a willingness to testify in this matter. The district director has not established that the information in these affidavits was inconsistent with the claims made on the application, or that such information was false. 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.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as

continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.