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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

L2.

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAR 30 2007

MSC 02 078 61309

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, of if the matter 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, Los Angeles, 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 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.

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 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).

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

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.

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).

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

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:

- An affidavit notarized on October 27, 2004 from [redacted] stating that she met the applicant in January 1983 and later entrusted her with caring for [redacted]s elderly mother.

- An affidavit notarized on October 26, 2004 from [redacted] stating that the he knows the applicant and her husband left Mexico for the United States in 1981. [redacted] states that he saw the applicant again when he himself came to the United States in 1984, and has had close contact with the applicant ever since.

- An affidavit notarized on October 26, 2004 from [redacted] stating that he was introduced to the applicant by her husband in June 1982 and has had regular contact with her and her husband since that time.

- An affidavit notarized on October 26, 2004 from [redacted] stating that the applicant was her neighbor in Santa Ana, California upon arriving in the United States in 1981 and that she has kept in constant contact with the applicant ever since.

- An affidavit notarized on April 14, 2005 from [redacted], the applicant's husband, stating that he and the applicant, who was eight months pregnant at the time, first entered the United States on or around December 3, 1981. [redacted] states that the applicant returned to Mexico to give birth on January 14, 1982, re-entering the United States again on January 30, 1982. [redacted] attests that he and the applicant resided at [redacted] Ana, California until 1986.

- An affidavit notarized on October 26, 2004 from [redacted] stating that he was present at the applicant's wedding in Mexico in May 1980 and saw the applicant shortly after she arrived in the United States in 1981. [redacted] states that he knows the applicant has resided continuously in the United States because he has kept in touch with her.

- An affidavit notarized on October 26, 2004 from [redacted] stating that he met the applicant when she attended a gathering at his house in December 1981, and has seen her "at least three or four times a year" thereafter.
- A letter dated July 17, 2003 from [redacted] stating he has known the applicant since December 1982.
- A letter dated June 5, 1990 from [redacted] stating that he and the applicant arrived in the United States in 1981.
- Receipts showing that the applicant's husband paid rent for an apartment at [redacted] m 1986 to 1988.
- Pay stubs for the applicant from [redacted] s for the years 1986 through 1988.
- A "pupil admission" form dated July 27, 1987 containing the applicant's name and signature.
- A postal receipt postmarked May 26, 1987 and bearing the applicant's name as sender, with residence listed as [redacted]
- A postal receipt postmarked August 13, 1986 and bearing the applicant's name as sender, with residence listed as [redacted]
- Tax documents showing that the applicant worked for [redacted] in 1985 and 1988.
- A receipt from [redacted] for furniture purchased by the applicant on August 25, 1987.

On August 2, 2004, the director issued a Notice of Intent to Deny (NOID) stating that the evidence submitted by the applicant to demonstrate residency prior to 1986 was "insufficient." The director also stated that "certain questions arise from the documentations which, in turn, impact on the overall credibility of the claim." The director observed that the declaration from the applicant's husband "does not contain corroborative documents" to support it. The director also noted that the "buyers copy of the revolving charge sales invoice dated, 1/4/82 has a company revision date of 05/93, on the left hand upper corner." Finally, the director observed that although the applicant indicated on her Form I-687 that she was employed at Galaxy Investments from 1986 to the date of that application, the file contains a "1985 W-2 form from Galaxy Investments."

In a letter dated August 30, 2004, counsel requested additional time to submit a rebuttal to the NOID.

In a decision to deny the application dated September 8, 2004, the director indicated that the applicant had failed to submit a rebuttal to the NOID and denied the application on the grounds stated in the NOID.

The director reopened the matter on September 9, 2004, providing the applicant with an extension of 60 days to provide additional evidence.

In a rebuttal dated October 29, 2004, counsel contends that the affidavits previously submitted by the applicant are sufficient to meet the applicant's burden of proof, but also submits additional affidavits as further evidence of residency.

In a decision to deny the application dated November 3, 2004, the director indicated that the information submitted by the applicant "failed to overcome all the grounds for denial as stated in the NOID."

On appeal, counsel reasserts that the applicant has submitted sufficient evidence of residency to meet her burden of proof.

The record also shows that the applicant filed an additional Form I-687, Application for Status as a Temporary Resident, on May 4, 2005. In support of this application, the applicant submitted a declaration in which she stated that she first entered the United States from Mexico on or around December 3, 1981, returned to Mexico on January 3, 1982, and returned again to the United States on January 30, 1982. In a decision to deny the application dated July 26, 2006, the director found that the applicant testified under oath at an interview on July 10, 2006 that she first entered the United States in 1981, but also left the United States in 1981 not to return again until February 14, 1982. The director determined that the applicant's absence exceeded 45 days, and that the applicant had thus failed to demonstrate that she continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. No appeal has been filed from that decision.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

The evidence of residency submitted by the applicant for the period beginning in December 1981 through July 1984 lacks detail and contains inconsistencies. As noted above, the applicant has presented conflicting accounts as to the duration of her absence from the United States in late 1981 and early 1982. The third party affidavits submitted by the applicant, such as the affidavit from her husband [redacted], do not include the exact dates of the applicant's absence. At the very least, these omissions and inconsistencies raise doubts as to the duration of the applicant's absence, which, according to the applicant's most recent testimony, exceeded 45 days.

When coupled with other inconsistencies concerning the applicant's place of residence during that time period, the discrepancy concerning the applicant's absence from the United States raises doubts that the applicant even entered the United States prior to 1984. On her initial Form I-687 application, the applicant listed [redacted]alifornia as her residence from December 1981 to July 1984, and [redacted]ifornia as her residence from July 1984 to February 1986. This contradicts the testimony of the applicant's husband and [redacted], who both indicate in their affidavits that the applicant resided in Santa Ana beginning in 1981. That other

affidavits attesting to the applicant's place of residence during this period do not include the applicant's address, are generally vague and/or fail to indicate contact with the applicant on such a regular basis that continuous residence can be inferred.

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).

The applicant herself has submitted conflicting statements as to her residences and absences from the United States. It is reasonable to expect her to explain why she has submitted the contradictory information and adequately resolve the contradictions through credible evidence. Likewise, it is reasonable to expect the applicant to submit explanations from affiants providing testimony that contradicts other evidence submitted by the applicant. The applicant has failed to present sufficient credible evidence of residency to adequately address the discrepancies noted herein. These discrepancies raise questions about the authenticity of the remaining documents the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the contradictions and other insufficiencies in the evidence, the AAO determines 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 since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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