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

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[redacted]

FILE: [redacted] Office: CINCINNATI Date: NOV 07 2007

MSC 02 274 60670

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, or 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, Cincinnati, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the evidence of record did not establish that the applicant entered the United States prior to January 1, 1982, or resided in an unlawful status through May 4, 1988.

On appeal, counsel asserts that the district director applied an incorrect standard of evidence to evaluate the instant case and that under the preponderance of the evidence standard, the applicant has substantiated her claim of continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988.

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 or 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative and credible.

In a September 7, 2004, Notice of Intent to Deny, the district director stated that the applicant failed to provide any primary evidence that she entered the United States prior to January 1, 1982. The director also noted that the applicant's own statement that she was not outside the United States since her arrival before January 1, 1982, through May 4, 1988, was inconsistent with the applicant's Form I-687 and Determination of Class Membership Form. Both forms stated that the applicant did leave the United States on April 24, 1987, for Trinidad and returned on May 22, 1987, from Trinidad. The applicant entered the United States on a B-2 visitor visa in lawful status. The applicant was given 30 days in which to respond and submit additional evidence. Counsel requested an additional 60 days to submit evidence. No additional evidence was submitted. In a March 29, 2005, Notice of Decision, the district director denied the applicant's Form I-485 application for failure to establish entry into the United States prior to January 1, 1982, or unlawful residence through May 4, 1988.

On appeal, counsel asserts that the district director applied an incorrect standard of evidence to evaluate the instant case. The AAO agrees with counsel, but considers it harmless error. Under the correct preponderance of the evidence standard, the applicant still fails to meet her burden of establishing entry into the United States before January 1, 1982 for the reasons mentioned below.

The applicant submitted a letter from [redacted] in Trinidad, dated March 31, 2003. [redacted] certified that he has known the applicant for the past 15 years. He also stated that the applicant visited the above-mentioned church while she lived in Trinidad and that she left the country in March 1981. In the Notice of Decision, the director noted that the [redacted] does not claim to have first-hand knowledge of where the applicant went after leaving Trinidad. In response, counsel submitted an August 22, 2005, updated affidavit from [redacted] who stated that he was well aware of the applicant's trip to the United States in March of

1981. In the updated affidavit from [redacted] he fails to show inclusive dates of membership, state the address where the applicant resided during membership period, include the seal of the organization impressed on the letter or the letterhead of the organization, and establish the origin of the membership information as required under 8 C.F.R. § 245a.2(d)(3)(v).

The record also reflects that the applicant submitted her own undated statement that she "was not outside the United States since her arrival before January 1, 1982 through May 4, 1988." The director noted that this statement was inconsistent with the applicant's Form I-687 and Determination of Class Membership Form. In both forms, the applicant had indicated that she was absent from the United States from April 24, 1987, to May 22, 1987, during a visit to Trinidad.

Counsel contends that the applicant's statement was simply an error and not intended to be a misrepresentation. Counsel stated that the applicant does not benefit from saying she was never outside the United States since the purpose of the LIFE Act is for those who were "front desked" due to brief absences. However, the applicant also submitted a March 17, 2003, notarized letter from [redacted] also stated that the applicant had resided continuously in the United States from March 1981 until September 1988.

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). The record contains no independent objective evidence to explain the above inconsistency.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. The applicant was given an opportunity to resolve [redacted] inconsistent statement. Counsel submitted a second affidavit by [redacted] dated August 19, 2005. In this affidavit, [redacted] reiterated that the applicant lived with her from March 1981 until September 1988 and did not mention any absences. No explanation was given as to the inconsistency of either of [redacted] affidavits with the applicant's own statements. The affiant's statements lack credibility.

Therefore, based on the above, the applicant has failed to establish that she resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, she 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.