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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

42

FILE: [redacted] Office: HOUSTON Date: SEP 06 2007

MSC 02 247 61144

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, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant's testimony and the supporting evidence are sufficient to meet the preponderance of evidence standard to establish eligibility under the LIFE Act. Counsel submits a brief in support of the 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. Section 1104(c)(2)(B) of the LIFE Act; 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 or petitioner 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 or petition.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant stated on a form to determine class membership, which she signed under penalty of perjury on December 3, 1995, that she first entered the United States in November 1981, when she crossed the border without inspection. On her Form I-687, Application for Status as a Temporary Resident, which she signed under penalty of perjury on December 3, 1995 and again on May 31, 1996, the applicant stated that her only absence from the United States during the required period was in July 1987. The applicant

further stated that she worked for [redacted] M Market in Houston from November 1981 to June 1988. The applicant also stated that she lived at the following address: [redacted] Houston from November 1981 to August 1987, and at [redacted] from August 1987 to June 1988.

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

1. An October 1, 2004 affidavit from [redacted] in which she stated that she had known the applicant since November 1981, that she met her in their neighborhood at Avenue A, South Houston, Pasadena, Texas, and that they have been friends since the applicant moved to Houston. The applicant stated on her Form I-687 application that she moved to Avenue A in Houston in August 1987. Therefore, the affiant's statement that she met the applicant in their Avenue A neighborhood in 1981 is questionable.

2. An October 6, 2004 affidavit from [redacted] in which she stated that she had known the applicant since December 1982. [redacted] stated that she worked with the applicant for eight years, but did not state for whom and where they worked. In a May 29, 1996 affidavit, Ms. [redacted] also attested that the applicant left the United States in July of 1987 and returned in the same month. The affiant stated that she was aware of the applicant's travel because she helped her to pack her luggage and was invited to the applicant's home for dinner upon her return.

3. An October 10, 2004 affidavit from [redacted], in which she certified that she had known the applicant since December 1982. [redacted]s affidavit is unclear as to when and where she first met the applicant.

4. An October 15, 2004 sworn statement from [redacted], in which she certified that she had known the applicant since December 1982. [redacted] did not state how and under what circumstances she met the applicant.

5. In an October 6, 2004 affidavit, [redacted] stated that she had known the applicant since "the early 80's." The affiant did not state the circumstances under which she met the applicant or how she dated their relationship. In an October 12, 2004 affidavit, [redacted] stated that she had known the applicant since 1982. However, [redacted] added no additional details regarding when or how she met the applicant.

During her LIFE Act adjustment interview on September 28, 2004, the applicant told the interviewer that she worked as a babysitter for eight years after she arrived in the United States. This statement is inconsistent with her Form I-687 application, on which she stated that she worked in the kitchen of a market until June 1988, when she began working as a babysitter for [redacted]. 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 applicant submitted no documentary evidence, such as canceled paychecks, pay stubs, or similar evidence, to explain the inconsistencies in the record.

The applicant also reiterated that her only absence after her arrival in 1981 was in July 1987, when she traveled to Mexico for five days to visit her family. Although she stated on her Form I-485, Application

to Register Permanent Resident or Adjust Status, that she had a son born in Mexico on October 7, 1982, the applicant denied that she had a son and denied that she traveled to Mexico to register a birth in 1982. On appeal, counsel asserts that the applicant lied about her son because she felt she would be disqualified if she admitted to leaving the United States to give birth. The applicant submits a May 25, 2005 affidavit in which she states that she was "scared and nervous" during the interview "and somehow made a bad choice." Counsel also asserts that the applicant traveled to Mexico during the first week in October and remained there for three weeks after giving birth to her child. However, the applicant does not state when she went to Mexico to give birth or how long she remained there. No other evidence in the record supports counsel's assertions about the applicant's departure and return to the United States in 1982. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant's failure to admit to this absence in 1982 raises a question as to her credibility.

The applicant submitted no contemporaneous evidence to establish her presence and residency in the United States. Given the questions regarding the applicant's credibility, the unresolved inconsistencies in the record and the absence of any contemporaneous documentation, it is concluded that the applicant has failed to establish continuous residence in the United States for the required period.

The record reflects that the applicant was apprehended on December 30, 1999 and charged with a violation of 8 U.S.C. § 1325(a)(3), attempting to enter or obtain entry to the United States by a willfully false or misleading representation. The applicant was sentenced to three years probation and expeditiously removed from the United States. The record contains a Form I-690, Application for Waiver of Grounds of Excludability, filed with the district office on August 1, 2005 (MSC 05 305 12078). The record does not reflect that the director has issued a decision on this application.

The record also reflects that the applicant filed another Form I-687 application on March 25, 2005 (MSC 05 176 10060). The record also does not reflect that the director has issued a final decision on this application, and it is not at issue in this decision.

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