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

L 2

[redacted]

FILE: [redacted] Office: CHICAGO Date: SEP 0 6 2007

MSC 02 166 61388

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: Self-represented

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, Chicago, Illinois, 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, the applicant requests that her case be reopened and a new interview be conducted. The applicant claims that she is entitled to the benefit being sought as she has been residing in the United States since 1981.

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:

- An affidavit notarized March 20, 1991, from [redacted] of Chicago, Illinois, who attested to the applicant's residence in the United States since 1981. The affiant asserted that she speaks to and sees the applicant on a regular basis.
- An affidavit notarized March 21, 1991, from [redacted] manager of Jerry's Unisex in Chicago, Illinois, who indicated that the applicant has been a client at Unisex Beauty Salon since the end of 1981. The affiant asserted that records were no longer available.
- An affidavit notarized March 8, 1991, from [redacted] manager of El Original Supermercado Cardenas in Chicago, Illinois, who indicated that the applicant has been a client since 1981. The affiant asserted that records were no longer available.
- A letter dated October 25, 1989 from [redacted]s of Evanston Travel Associates in Evanston, Illinois, who indicated that he has known the applicant since January 1985 and that the applicant "was very capable in her position with [redacted]in Highland Park, Illinois" and takes pride in her work.
- A letter dated October 25, 1989, from [redacted], an associate for [redacted] Jr., who indicated that the applicant was employed as a housekeeper for [redacted] from December 1985 to August 1989. [redacted], now deceased, was a first vice-president for investments at [redacted] Inc. in Chicago, Illinois.
- An affidavit notarized March 7, 1991, from [redacted], manager of El Guero Supermercados in Chicago, Illinois, who indicated that the applicant has been a client since February 1986.
- A letter dated October 27, 1989, from [redacted], an ESL/Civics Coordinator at Township High School District 13 in Highland Park, Illinois, who indicated that the applicant has been enrolled in an adult and continuing education program and attended English as a Second Language classes from January to December 1986.
- An affidavit notarized March 11, 1991, from [redacted] of Chicago, Illinois, who indicated that the applicant was in her employ as a babysitter from May 1982 to September 1985 at [redacted]Chicago, Illinois. The affiant asserted that she has remained in contact with the applicant.
- An affidavit notarized March 4, 1991, from [redacted] of Chicago, Illinois, who indicated that the applicant was a roommate from 1981 to 1983 at [redacted] 1983 to 1984 at [redacted]e; and from 1985 to 1987 at [redacted] The affiant asserted that he was responsible for telephone and utility bills.
- Several envelopes postmarked: 1) December 21, 1981, February 26, 1982, March 10, 1982, and April 12, 1982 to the applicant's address at [redacted]; 2) January 12, 1984, July 12, 1984, and May 12, 1985 to the applicant's address at [redacted] and 3) in November 1986 and 1987 to [redacted]s address at [redacted]

In his Notice of Intent to Deny issued on April 30, 2004, the director advised the applicant that she did not provide sufficient primary or secondary evidence to establish her claim. The director noted that the affidavits and other documentation had been taken into consideration; however, it was determined that the applicant had not established by a preponderance of evidence that she met the requirements to adjust her status under the LIFE Act.

However, 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.

In this instance, the applicant submitted evidence, including contemporaneous documents, 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 record contains no evidence to suggest that the district director attempted to contact any of the former employers to verify the authenticity of the employment documents submitted. 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 proof 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.

Finally, it is noted that the applicant filed a Form I-690, Application for Waiver of Grounds of Excludability, on May 1, 1991, that has not been adjudicated.

ORDER: The appeal is sustained.