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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

APR 25 2008

FILE: [redacted] Office: CHICAGO Date:

MSC 02 240 61961

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. The file has been returned to the National Benefits Center. 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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. Specifically, the director found that there was insufficient evidence in the record to establish eligibility, and noted that the record lacked primary and secondary evidence as provided by 8 C.F.R. § 103.2(b).[1]

On appeal, counsel asserts that the director failed to consider all of the evidence submitted by the applicant as required by 8 C.F.R. § 245a.12(f). Counsel further contends that sufficient secondary evidence has been submitted pursuant to 8 C.F.R. § 103.2(b). Finally, counsel provided copies of previously submitted evidence for consideration, and contends that the evidence is the record is more than sufficient to establish the applicant's eligibility.

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.

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[1] Although the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) to the instant application, it is harmless error because the AAO evaluates the sufficiency of the evidence in the record according to its probative value and credibility as required at 8 C.F.R. § 245a.12(f).

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).

On her affidavit for class membership, which she signed under penalty of perjury on December 26, 1990, the applicant claimed that she first entered the United States on September 20, 1981 without inspection. On a Form I-687, the applicant claimed that she resided at [redacted] in Chicago from September 1981 through the relevant period, and claimed to work for the following employers:

September 1981 to August 1986: Mrs. [redacted]
September 1986 to present: [redacted]

In support of her continuous unlawful residence from before January 1, 1982 through May 4, 1988, the applicant submitted the following documents:

(1) Affidavit dated December 26, 1990 by [redacted] claiming that she has known the applicant since September 1981. She claims that they have a "very good friendship" and that they come from the same town in Mexico.

(2) Letter dated December 26, 1990 from [redacted]r, President of Schultz & Odhner's, Inc., claiming that the applicant worked for the company since September 1986.

(3) Notarized statement dated December 27, 1990 by [redacted] claiming that the applicant worked for her as a babysitter and a housekeeper from September 21, 1981 to August 31, 1986.

(4) Notarized statement dated December 26, 1990 by [redacted] claiming that she has known the applicant from September 1981 to the present.

(5) Unnotarized and undated statement by [redacted] claiming that the applicant is a regular customer of El Guero Supermarket.

(6) Notarized statement dated December 26, 1990 by [redacted] claiming that the applicant is a regular customer of Carnicerias Guanajuato and Supermarket.

(7) Notarized statement dated December 27, 1990 by [redacted], claiming that she has known the applicant since October 1981.

(8) Notarized statement dated December 26, 1990 by [redacted], claiming that he has known the applicant in Chicago since September of 1981. He further states that he and the applicant come from the same town in Mexico.

(9) Affidavit of Co-Tenancy dated December 26, 1990 by [redacted] claiming that the applicant lived with him and his family at [redacted] Chicago, from September 1981 to December 1988.

(10) Affidavit dated August 22, 1995 by [redacted], claiming that she has known the applicant since 1986. She claims that she knows the applicant because they attend the same church.

(11) Second letter from [redacted], President of Schultz & Odhner's, Inc., dated February 14, 2003, claiming that the applicant worked for the company since September 1986.

(12) Affidavit dated August 22, 1995 by [redacted] claiming that the applicant lived with her at [redacted] in Chicago in 1984 and has been her friend ever since.

(13) Notarized statement dated August 22, 1995 from [redacted] Pastor of Iglesia de Dios de la Profecia, claiming that he knows the applicant through the church.

(14) Applicant's Form W-2 for 1987, evidencing she received wages from Schultz & Odhner's, Inc. during that period.

The director found this initial evidence insufficient and issued a Notice of Intent to Deny (NOID) the application on December 29, 2003. The director afforded the applicant thirty days in which to supplement the record with additional evidence. In a response dated January 27, 2004, the applicant submitted the following documents:

(1) Notarized statement dated January 13, 2004 by [redacted], M.D., claiming he has known the applicant since October 1981. He also submitted copies of her handwritten medical records, with entries on the following dates: October 25, 1981; January 20, 1982; April 20, 1983; June 25, 1984; September 20, 1985; February 15, 1986; and October 20, 1987.

(2) Second affidavit dated January 15, 2004 by [redacted], affirming that the applicant worked for her from September 21, 1981 to August 31, 1986.

(3) Copies of the applicant's registered mail receipts dated February 13, 1986, March 3, 1986, April 29, 1986 and September 19, 1986.

(4) Copies of the applicant's Forms 1040, U.S. Individual Income Tax Return, for the years 1987 and 1988.

(5) Copy of the applicant's Form W-2 for 1988, evidencing that she received wages from Schultz & Odhner's, Inc. during that period.

On February 25, 2005, the director denied the petition. Specifically, the director found that the evidence submitted was insufficient to establish the applicant's eligibility for the benefit sought. On appeal, counsel resubmits the evidence previously provided, and alleges that the applicant met her burden of proof by a preponderance of the evidence.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters of employment and affidavits as evidence to support her Form I-485 application. Here, the applicant has failed to meet this burden.

The first documents the AAO will review are the letters from the applicant's employers. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In this matter, the applicant claims to have worked as a babysitter and housekeeper for [redacted] from September 1981 to August 1986, and as a machine operator for Schultz & Odhner's from September 1986 to present. The letters submitted from both of her employers, however, do not meet the evidentiary requirements outlined above.

The applicant submitted two affidavits from [redacted] dated December 27, 1990 and January 15, 2004. Both affidavits merely state that the applicant was honest and reliable. The only information provided about the applicant's employment is that she worked as a babysitter and housekeeper, and earned $60 per week including food. Ms. [redacted] failed to provide the applicant's address at the time of employment, show periods of layoff, and declare whether the information provided was taken from records, whether professional or personal as required under 8 C.F.R. § 245a.2(d)(3)(i).

In addition, the applicant submitted two letters from Schultz & Odhner's, Inc., both of which were signed by the company's president, [redacted]. Both letters, dated December 26, 1990 and February 14, 2003, merely claim that the applicant has been working for the company since September 1986. Both of these letters omitted the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, [redacted] also failed to declare whether the information was taken from company records, and failed to identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The applicant's inability to provide acceptable letters of employment in compliance with the regulations at 8 C.F.R. § 245a.2(d)(3)(i) seriously detracts from the credibility of her claim of continuous unlawful residence during the requisite period. As such, these letters will only carry minimum evidentiary weight in this proceeding.

The applicant also submits notarized statement dated August 22, 1995 from [redacted] Pastor of Iglesia de Dios de la Profecia, claiming that he knows the applicant through the church. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations of churches are acceptable evidence to support an applicant's claim of residency. However, the regulation requires that such attestations identify the

applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address or addresses where the applicant resided during membership; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and establish the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v)(A)-(G).

In this matter, the statement from the applicant's alleged pastor omits most of these requirements. It does not show the applicant's inclusive dates of membership nor does it state the address or addresses where the applicant resided during membership. In addition, it is not written on church letterhead nor does it include the seal of the organization impressed on the letter. Finally, it does not establish how the author knows the applicant and fails to establish the origin of the information being attested to. This documents, like the employment letters, will be afforded minimal evidentiary weight.

The applicant submitted a number of affidavits from friends and acquaintances, which are completed on almost identical templates and provide very similar information. The applicant submitted sworn affidavits by [redacted], and [redacted]. All these affiants stated that they have known the applicant since 1981 and that the applicant has been a continuous resident of the United States since that time. They provided their address, as well as the applicant's current address, but failed to provide any additional details regarding the nature of their acquaintance with the applicant.

In addition, the affidavits of [redacted] and [redacted] claim that they became acquainted with the applicant later during the requisite period, in 1986 and 1984, respectively. It should be noted that [redacted]s affidavit claims that the applicant lived with her in 1984 at [redacted] in Chicago, which directly contradicts the affidavit of co-tenancy dated December 26, 1990 by [redacted] who claimed that the applicant lived with him and his family at [redacted] Chicago, from September 1981 to December 1988. No attempt to explain this discrepancy has been made.

The applicant also submitted two affidavits, by [redacted] and [redacted], who completed the same affidavit form and provided very similar information. Specifically, both state that the applicant is a regular customer of a grocery store. The affiants state neither their affiliation, if any, with these stores, nor do they provide the origin of the information to which they attest.

Although the applicant has submitted numerous affidavits in support of her application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. It should be noted, however, that the applicant's tax returns for 1987 and 1988 suggest that she was in fact residing in the United States during that period. However, the record lacks sufficient evidence to corroborate the claims of residency prior to 1987.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim.

Finally, the applicant submits copies of her medical chart which contains various entries between 1981 and 1987. On average, there is approximately one noted visit per year. While these records suggest that the applicant was present in the United States during the requisite period, they are insufficient to prove that she was continuously residing in an unlawful manner during the entire period.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.