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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: PHOENIX Date: AUG 01 2008

MSC 02 165 60260

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, Phoenix, Arizona, and is now before the Administrative Appeals Office 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 from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief.

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 states 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 or about December 1989, the applicant applied for class membership in a legalization class-action lawsuit and submitted a Form I-687, Application for Status as a Temporary Resident. The applicant claimed to have entered the United States with a visitor's visa at the San Ysidro, California, port of entry. She also provided the following information regarding her residences, employment, and an absence from the United States up until the date of submitting her Form I-687:

- Residences. The applicant claimed to have resided at [redacted] California prior to December 1986; at [redacted] from December 1986 to February 1988; and at [redacted] from February 1988 to November 1989.
  Employment. The applicant claimed to have been employed [redacted] in "housekeeping," working 30-40 hours per week from unspecified dates in 1985 to 1986.
  Absence. The applicant claimed to have departed the United States on only one occasion – to travel to Mexico to apply for a birth certificate. Although the applicant stated that she did not remember the date of her departure, an abstract of her Mexican birth certificate, contained in the record, indicates that it was issued in Mexico July 27, 1989.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on March 14, 2002. The applicant was initially interviewed in connection with her Form I-485 on April 16, 2003. In support of the Forms I-687 and I-485, the applicant submitted the following documentation regarding her residence in the United States from 1981 through 1988:

1. A fill-in-the-blank affidavit, dated December 14, 1989, from [redacted] of Inglewood, California, stating that he had personal knowledge that the applicant resided at [redacted] from unspecified dates from 1981 to 1985. [redacted] recommended the applicant and stated that the longest time he had not seen her had been for seven to eight months during that time period.

2. A fill-in-the-blank affidavit, dated November 22, 1989, from [redacted] of Buena Park, California, stating that the applicant is her god-mother and resided with her [redacted] from January 15, 1981 to November 10, 1985.

3. A fill-in-the-blank affidavit, dated November 22, 1981 (the year of the notarization is most probably in error and should read "1989" as it is similar to the one provided by Ms. [redacted] in No. 2, above), from [redacted] California, stating that the applicant resided with him at [redacted] from January 15, 1981 to November 10, 1985.

4. A fill-in-the-blank affidavit, dated November 19, 1989, from [redacted] of San Diego, California, stating that he had personal knowledge that the applicant resided at [redacted] from November 1985 to September 1986. [redacted] states that he is able to determine the beginning of his acquaintance the applicant because the applicant lived in his house and helped his wife clean during that time period.

5. A letter, dated June 4, 1989 from [redacted] stating that she has resided at [redacted] for over 27 years and that [redacted], his wife Norma – the applicant - and their children [redacted] had lived in her home for over two years. In a second letter, dated December 13, 1989, [redacted] states that she had known the applicant since November 1985 when the applicant was living at [redacted] and that the applicant did housecleaning and laundry for her until September 1986 when the applicant married [redacted] after their marriage, the applicant and her husband moved into [redacted] home and resided with her continuously since November 1986.

6. A fill-in-the-blank affidavit, dated November 20, 1989, from [redacted] alleged to be the applicant's spouse) of La Mesa California, stating that he had resided with the applicant at the following addresses in California during the time periods noted: at [redacted] September 20, 1986, to January 30, 1987; at 758 S. [redacted] from February 1, 1987 to October 30, 1987; and, at [redacted] from November 1, 1987 to November 20, 1989.

7. A fill-in-the-blank affidavit, dated November 22, 1989, from [redacted] Cajon, California, stating that he had personal knowledge that the applicant resided at the same addresses, during the same time periods, as noted by [redacted] in No. 6, above. [redacted] states that he is able to determine the beginning of his acquaintance with the applicant because he met her "leaving with him" and that he used to "go with them" two or three times a month.

8. A photocopy of a birth certificate for the applicant's son, [redacted] showing his birth on March 15, 1987, in San Diego, California.

On November 14, 2003, the applicant was requested to submit additional documentation in support of her claim of having entered the United States before January 1, 1982, and having resided in a continuous unlawful status from then through May 4, 1988. The applicant was also requested to appear for a second interview in connection with her Form I-485. The applicant responded that she was unable to attend the second interview due to illness, but provided additional documentation regarding her children's birth certificates and vaccination records (dated on or after March 1987), and documentation dated in or after 1994.

In a Notice of Intent to Deny (NOID), dated May 26, 2006, the district director determined that the applicant had failed to submit sufficient evidence demonstrating her continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The applicant was granted thirty days to respond to the notice. In a response to the NOID, dated July 11, 2006, the applicant provided the following additional documentation:

9. An affidavit and letter, dated June 9, 2006, from [redacted] of Chula Vista, California, stating that he had known the applicant from 1981 to 1986 when she lived in Buena Park and San Diego, California.

10. A similar affidavit and letter, dated June 21, 2006, from [redacted] of Buena Park, California, stating that she had known the applicant since 1981, and that the applicant had resided at the following addresses in California: [redacted] Park, from 1981 to 1985, and at [redacted], from 1985 to 1986.

In a Notice of Decision (NOD), dated February 6, 2007, the district director denied the application based on the reasons stated in the NOID.

The applicant, through counsel, filed the current appeal from the district director's decision on March 7, 2007. On appeal, counsel submits a brief asserting that the applicant "came to the United States without inspection in 1981," has lived here for over 25 years, and meets all of the eligibility requirements for adjustment of status under the LIFE Act. Counsel states that from the time of her entry in 1981 until sometime in 1985, the applicant lived with and cared for a family friend, [redacted] who paid for all of her necessaries and expenses, and for this reason the applicant has no "...record of anything, such as a bill or lease in her name for those years....[O]nce the applicant began living on her own in 1986, she began to have a paper trail that can be used to establish her continuous presence for the remaining years of the qualifying period...."

In support of the appeal, counsel resubmits documentation previously contained in the record and provides the following additional documentation regarding the applicant's residence in the United States from 1981 through 1985:

11. Two similar letters, dated February 24, 2007 (notarized in San Diego,County, California on February 27, 2007), from [redacted], both of Tecate, Baja California, Mexico, stating that the applicant was living with [redacted]

[redacted] at [redacted], California, during the years 1981 to 1985, due to the fact that [redacted] was medically ill and the applicant was staying to help her with her basic needs during that time. They state that when they "often visited [the applicant] was always by her side."

The issue in the proceeding is whether the applicant has submitted sufficient documentation to establish, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

None of the above-noted affidavits are accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. None of the affiants attest to their specific knowledge of the applicant's alleged entry into the United States in January 1981, are generally vague as to how they date their acquaintances with the applicant - how often and/or under what circumstances they had contact with the applicant during the relevant period - and the affidavits lack details that would lend credibility to their claims. As such, the statements can be afforded only minimal weight as evidence of the applicant's residence and presence in the United States.

On her Form I-687, the applicant did not list her residence at [redacted] where she is alleged to have lived from 1981 to 1985. In their affidavits (Nos. 2 and 3, above), neither [redacted] mentioned anything about the applicant's allegedly having taken care of [redacted] during that particular time period.

It is also unclear as to how the applicant initially entered the United States. She claims to have entered with a visitor's visa, but her attorney states that she entered without inspection.

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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Id.*

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).

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no credible school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. §

245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists mostly of third-party fill-in-the-blank affidavits ("other relevant documentation") that lack specificity. As noted above, there are inconsistencies in the documentation regarding the applicant's entry and residence in the United States from 1981 to 1985.

The absence of verifiable documentation to support the applicant's claim of continuous residence during the relevant period detracts from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 lack of credible supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.