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

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FILE: [redacted] Office: LOS ANGELES Date: AUG 01 2008

MSC 02 247 64649

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 your case 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: On February 12, 2007, the District Director, Los Angeles, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined in a Notice of Intent to Deny (NOID) dated January 9, 2007, that the applicant failed to meet her burden of proof to establish that she first entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988. The director found internal inconsistencies between the applicant's testimony, applications, and other evidence in the record. The director noted that during her interview, the applicant stated she first entered the United States in 1981, but that in December 1985, she was detained in McAllen, Texas after leaving Honduras with the intention of entering the United States illegally. The director further noted that the applicant filed a Form I-589, Request for Asylum in the United States, in which she indicated that she fled from Honduras and entered the United States in 1987 for fear of persecution by the Cinchoneros Popular Liberation Movement (MPL). The director noted that the applicant failed to submit a rebuttal to the proposed grounds for denial in a January 9, 2007, Notice of Intent to Deny (NOID).

In response, the applicant submitted additional letters from [redacted] and a statement from the applicant. The applicant asserted that she has resided continuously in the United States since she first came on December 18, 1981. She stated that on November 5, 1985, she went to Honduras to visit her family and was apprehended by immigration authorities upon attempting to re-enter the United States approximately one month later. She stated that a man claiming to be an attorney filled out some paperwork for her and that she thought the paperwork she was signing was a green card application. She asserts that the paperwork was not read back to her and that she was just told where to sign. Counsel asserted that the inconsistencies between information in the Request for Asylum and the applicant's LIFE Act application and testimony could be explained by the fact that the applicant did not assist in the preparation of her asylum application. Counsel asserts that the applicant had no knowledge of the contents of the asylum application and in no way knowingly provided the information contained in that application. Counsel did not address the applicant's detention in McAllen, Texas, in 1985.

On appeal, counsel for the applicant asserts that the applicant's application and supporting documents establish her eligibility for adjustment of status under the LIFE Act. Counsel asserts that the applicant's additional evidence, which she submitted in response to the NOID, should have been considered in the adjudication of her application.

For reasons set forth below, the AAO finds that the applicant has established that she maintained continuous physical presence in the United States during the period from about December 11, 1985, through May 4, 1988. Therefore, it is not necessary to address the director's finding that the applicant may have entered the United States in 1987 because of information provided on her asylum application.

The AAO has reviewed all of the evidence and made a de novo decision based on the record and the AAO's assessment of the credibility, relevance, and probative value of the evidence.[1]

An applicant for permanent resident status under section 1104 of the LIFE Act 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 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 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 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 that fill-in-the-blank affidavits providing generic information.

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[1] The AAO maintains plenary power to review each appeal on a de novo basis 5 U.S.C. § 557(b)("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.") *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F 2d, 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See e.g. Dor v. INS*, 891 F2d 997, 1002n.9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish her entry into the United States before January 1, 1982; to demonstrate her continuous residence from January 1, 1982, through May 4, 1988; and, to demonstrate her continuous physical presence in the United States during the requisite period.

CIS records indicate that the applicant was apprehended by the U.S. Border Patrol in 1985. A Form I-213, Record of Deportable Alien, dated December 13, 1985, indicates that the applicant entered the United States without inspection on or about December 11, 1985, near Brownsville, Texas. The applicant has submitted credible evidence that she resided in the United States thereafter during the requisite period, including an identification card issued on January 2, 1986, by the California Department of Motor Vehicles, U.S. Postal Service Registered Mail receipts date-stamped in 1986, 1987, and 1988, and correspondence mailed from Honduras to the applicant from 1986 to 1988. All of these documents list the applicant's address at [redacted] 90810. This is consistent with the applicant's claim on her Form I-687, Application for Status as A Temporary Resident, that she resided at this address from December 1985 to January 1989. She has thus established that she maintained continuous physical presence in the United States during the period from about December 11, 1985, through May 4, 1988. She has not, however, provided sufficient credible evidence that she entered the United States before 1985, and has thus not met her burden.

The record reflects than on June 4, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On April 11, 2006, the applicant appeared for an interview based on the application.

Regarding the requisite period before 1985, the record of proceeding contains the following documents:

> A handwritten receipt dated June 15, 1984, with an illegible signature. The line where the address can be filled out is left blank. The receipt is in the amount of $50 for a 14 k gold chain. This receipt can be given no weight as the information on it is not verifiable or complete. The receipt does not list the applicant's address at the time, and does not contain a name, address, telephone number or a legible signature for the seller;
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> Various letters and declarations from [redacted] two sisters who claim the applicant lived with them from December 1981 to 1987. These letters provided similar information with varying degrees of detail, with the most detailed being a declaration sworn to on February 2, 2007, from [redacted] states that she first met the applicant in December of 1981 and that her brother put the applicant in touch with her. She states that the applicant came to visit her, then came to live with her and her sister [redacted] She states that they immediately became good friends and that the applicant would help with the rent by giving them $50 per month. She states that none of the bills were in the applicant's name. She states that they would do many things together such as going out to eat, attend birthday parties, etc. She states that after several years, she moved and the applicant continued to live with Catalina. [redacted] states that they continued to remain very good friends and that she has been in contact with the

applicant either over the phone or in person, approximately once per week since she has known her, sometimes more frequently. She states that she has never known the applicant to leave the United States for any extended period of time since meeting her in 1981. [redacted] does not indicate that she has any personal knowledge of the applicant's entry into the United States in 1981. She does not explain how she specifically recalls that it was in 1981 that she met the applicant. Also, [redacted] claims to have lived with the applicant and maintained weekly contact with her since 1981, but does not indicate any knowledge of the applicant's departure to Honduras and her apprehension by the Border Patrol on December 11, 1985. [redacted] also fails to indicate personal knowledge of the applicant's entry in 1981, of her apprehension by the Border Patrol in 1985, and does not explain how she recalls specifically that it was December 1981 when she met the applicant). Lacking relevant details, these letters and declarations can be given minimal weight as evidence of the applicant's continuous residence in the United States from December 1981 to December 1985;

- A letter dated October 31, 2006, from [redacted] states that she has known the applicant since 1983, that she is a very loving, honest, and responsible person and that she is a good friend. This letter can be given little evidentiary weight as it is not notarized. Furthermore, [redacted] fails to indicate personal knowledge of the applicant's entry into and residence in the United States. [redacted] does not provide any addresses where the applicant has lived and does not indicate when, where, or under what circumstances she met the applicant. Because the letter is not notarized and is significantly lacking in relevant detail, it lacks probative value and has only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to have minimal probative value as evidence of the applicant's residence during the requisite period. The statements from [redacted] **that refer to the relevant years lack sufficient** detail to be found probative. Neither of them indicates personal knowledge of the applicant's entry in 1981 or explains how they specifically recall that it was in 1981 that they met the applicant. Although credible evidence of residence beginning in December 1985 is included in the record, there is minimal evidence of residence before December 1985.

The record of proceedings contains other documents, including a letter from [redacted] a member of the applicant's church who attests knowing the applicant since 1988; a letter from [redacted] sworn to on August 7, 1996, attesting that he has known the applicant for approximately five years; varied correspondence, a receipt for ambulance transport for service provided on December 24, 1988, various income tax documents, and, a Harbor Community Adult School identification that expires on May 31, 2003. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have first entered the United States on December 18, 1981, near San Isidro, California, and to have resided for the duration of the requisite period in California. As noted above, to meet his or her burden of proof, the applicant must provide evidence of eligibility apart from his or her own testimony. The applicant has failed to do so. In this case, her assertions regarding her entry are not supported by sufficient credible evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence she entered into the United States before January 1, 1982, and that she resided continuously in an unlawful status for the requisite 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 lack of credible supporting documentation 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 that she resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act. 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.