U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES Date: FEB 27 2008

MSC 02 264 60042

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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that she entered the United States before January 1, 1982, and that she resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, counsel asserts that the no explanation was given as to why the evidence was rejected. Counsel asserts that the applicant submitted declarations that independently corroborated the applicant's presence in the United States from 1981 to 1988.

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.* at 80. 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, 431 (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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In the Notice of Intent to Deny, dated May 5, 2005, the director stated that the applicant failed to submit any documentation of entrance on which the submitted affidavits may stand as evidence of continuous residence. The applicant submitted additional evidence.

In the Notice of Decision, dated September 26, 2005, the director determined that the applicant failed to overcome the reasons for denial stated in the NOID. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under the LIFE Act.

In support of the applicant's claim, the applicant also submitted photocopies of envelopes addressed to the applicant in Texas, post-marked on March 13, 1982 and on July 22, 1983. The record reflects that the applicant never lived at these addresses. The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act on December 12, 1989. In her Form I-687, Question 33, the applicant listed all of her residences in the United States since her first entry. The addresses on the submitted envelopes were not included. The applicant also submitted her own sworn to and subscribed affidavit, dated December 12, 1989. In her affidavit, the applicant listed four addresses. None of the addresses on the envelopes were listed. These discrepancies bring into question whether the envelopes post-marked in 1982 and 1983 are credible.

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 record contains no independent objective evidence to explain the above inconsistency.

The record includes a May 23, 2005, letter by [redacted], M.D. [redacted] stated that he consulted with the applicant for symptoms of depression and anxiety on December 1981, February 1983 and July 1985. The affiant provided a photocopy of his Physician and Surgeon card issued by The Medical Board of California on May 15, 1964. The affiant did not provide any supporting documentation, such as medical records or bills, to substantiate his claim.

The record contains a May 25, 2005, sworn affidavit by [redacted] stated that he has been acquainted with the applicant since 1984. The affiant stated that he regularly called and met the applicant in Houston, Texas. The affiant further stated that he proposed matrimony to the applicant at the Shalimar Theatres in Houston, Texas in 1984. The affiant provided a photocopy of his U.S. B-1/B-2 visa in his passport, issued on February 6, 1984.

The record includes a December 1, 1989, letter by manager of [redacted] in Houston, Texas. The affiant stated that the applicant worked for the company from November 1, 1981 through June 30, 1984. The affiant stated that the applicant performed various duties, including cleaning tables, washing dishes and filling food trays, for a salary of $3.00 per hour. The letter contains the address and phone number of the restaurant. Although not required, the affiant failed to include any supporting documentation of the affiant's identity or presence in the United States. The affiant also failed to 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

The record also includes a November 28, 1989, letter by [redacted] stated that the applicant has been in the United States since August 1981. The affiant stated that he was the manager of [redacted] from March 1981 until April 1987. He stated that the applicant worked for him from July 1984 until June 1986. The affiant further stated that the applicant worked as a cleaning and maintenance assistant for $3.50 per hour. The affiant provided his phone number. As with his previous letter, the affiant failed to include any supporting documentation of the affiant's identity or presence in the United States. The affiant also failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

The record contains a December 5, 1989, letter by [redacted] of [redacted] in Houston, Texas. [redacted] stated that the applicant worked at their store at [redacted] in Houston, Texas, from June 1986 until May 1989. The affiant stated that the applicant worked full time for an average salary of $3.00 per hour. The affiant further stated that the company was no longer in business and provided a telephone number for any questions. Although not required, the affiant failed to include any supporting documentation of the affiant's identity or presence in the United States. In addition, the affiant did not provide any contemporaneous documentation, such as payroll records or other company records, to support his claim. The affiant also failed to provide the applicant's address at

the time of employment, show periods of layoff, declare whether the information was taken from company records as required under 8 C.F.R. § 245a.2(d)(3)(i).

Although the applicant has submitted numerous affidavits in support of her application, the applicant has not provided any credible, contemporaneous evidence of entry into the United States and continuous unlawful residence in the United States. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed and supported documentation to corroborate the applicant's claim of entry into the United States before January 1, 1982, and continuous residence for the entire requisite period seriously detracts from the credibility of her claim. In addition, the discrepancies between the applicant's own statements and evidence submitted casts doubt on the credibility of the applicant.

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 evidence with discrepancies and minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

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.