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

U.S. Citizenship
and Immigration
Services

L2

[redacted]

FILE: [redacted] Office: ATLANTA Date: JUN 25 2008

MSC 02 235 60351

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, Atlanta, 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.

On appeal, counsel contends that the applicant entered the United States at the age of five. Counsel submits additional evidence for consideration.

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.

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).

In the Notice of Intent to Deny (NOID), dated June 15, 2005, the director stated that the applicant failed to submit sufficient evidence demonstrating her entry into the United States before January 1, 1982, and continuous unlawful residence in the United States since that date through May 4, 1988. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that additional evidence was received. In the Notice of Decision, dated August 18, 2005, the director denied the instant applicant based on the reasons stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States since that date through May 4, 1988. Here, the applicant has failed to meet this burden.

In support of her claim, the applicant submitted immunization records from 1985 through 1986 and numerous school records from 1986 through 1989. While it is clear from the evidence that the applicant resided in the United States from 1985 through 1989, the applicant has failed to submit sufficient evidence of her residence in the United States from January 1, 1982, through 1984. The applicant submitted two affidavits. Both affiants stated that they have known the applicant's family since 1981. While the affidavits are amenable to verification, the affiants failed to include detailed information about the applicant's place of residence during the statutory period. The applicant failed to submit any other independent evidence regarding her entry into the United States or for the years 1982 through 1984.

It is also noted that the record contains the applicant's Form I-687, Application for Status as a Temporary Resident, dated April 30, 1988. In her Form I-687, the applicant stated that she last came to the United States on April 15, 1981. She indicated that she had eight brothers and sisters. She stated that all but two of her siblings were born in Mexico City. The last sibling born in Mexico City was on January 7, 1982. **The applicant's mother had no additional children until 1986. The** applicant's remaining two siblings were born in Los Angeles County in 1986 and 1987. The record does not reflect how or with whom the applicant entered United States prior to January 1, 1982. The absence of this information, coupled with the fact that the applicant's mother was in Mexico City on January 7, 1982, seriously brings into question whether the applicant was in the United States prior to January 1, 1982.

Based on the lack of sufficient evidence from 1981 through 1984 and the applicant's Form I-687, it is more probable than not that the applicant first entered the United States after January 1, 1982 and sometime before 1985. Therefore, it is concluded that she has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence since that date 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.