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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MIAMI Date: JUN 30 2008

MSC 02 263 60924

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.

for 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 (director) in Miami, Florida. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director did not provide the applicant an opportunity to rebut adverse information and did not consider all of the evidence submitted by the applicant.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. *See* 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 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).

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.

The applicant, a native of the Dominican Republic who claims to have lived in the United States since May 1981, filed her application for permanent resident status under the LIFE Act (Form I-485) on June 20, 2002. At that time the record included the following documentary evidence of the applicant's residence and physical presence in the United States during the years 1981 to 1988:

- Five medical receipts identifying the applicant as the patient, including (1) a prescription from the Morrisania Neighborhood Family Care Clinic (NFCC) in Bronx, New York, dated May 13, 1981; (2) a Cytology Requisition from the Morrisania NFCC, dated June 24, 1981; (3) a radiology diagnosis from the Lincoln Medical & Mental Health Center, dated September 14, 1981; (4) a photocopied prescription signed by [redacted] dated September 30, 1981; and (5) a photocopied letter from the audiologist of the Morrisania NFCC, dated December 8, 1981, stating that the applicant had been seen for a hearing evaluation.

- A merchandise receipt from [redacted]s Boutique in Bronx, New York, dated July 23, 1981, identifying the applicant as the customer.

- An American Express money order receipt, signed by the applicant, dated December 23, 1981.

- A photocopied airline ticket apparently issued in the applicant's name by Eastern Airlines on July 8, 1987 for a flight from New York to Santo Domingo.

- Two affidavits from [redacted], the first dated August 20, 1989, stating that the applicant lived with her at [redacted] Bronx, New York, from May 1981 to November 1986, and the second dated March 30, 1991, stating that the applicant left the United States to visit her daughter in the Dominican Republic in July 1987.

  An affidavit from [redacted] dated August 24, 1989, stating that the applicant had lived with her since 1986 at [redacted], in Bronx, New York.

- A letter from a clergyman at the Church of Christ the King in Bronx, New York, dated August 24, 1989, stating that the applicant lived in the neighborhood, attended the church, and had been in the United States since 1981.

- An affidavit from [redacted], a resident of Bronx, New York ([redacted], dated July 12, 1989, stating that the applicant had made dresses for her since 1981.

- An affidavit from [redacted], the owner of a business called [redacted] in New York City, dated August 29, 1989, stating that the applicant had worked under her supervision as a sample maker, at a weekly salary of $140, from 1981 to 1988.

  Two affidavits from [redacted], a resident of Bronx, New York, both dated August 29, 1989, the first stating that the applicant is her cousin and had resided at [redacted] since 1981, and the second stating that the applicant had worked at her store – Betsy Discount in Bronx, New York – as a sales person at a weekly salary of $100 from 1988 to the present.

- Six letter envelopes addressed to the applicant from family members or others in the Dominican Republic, with stamps and postmarks that appear to span the time frame of 1981 to 1989.

On September 10, 2003 the director issued a Notice of Intent to Deny (NOID). The director cited some of the documentation submitted by the applicant, recounting her stories about how she came to the United States in May 1981 via Puerto Rico, settled in New York, and visited the Dominican Republic once in 1987, and noted that an immigration officer had disqualified the applicant in an earlier proceeding (applying for temporary resident status) on May 10, 1990, based on a finding that the applicant had fraudulently presented a photocopy of an altered airline ticket. Since this finding of fraud raised credibility questions about the applicant's previously submitted documentation, the director granted the applicant 30 days to submit additional evidence in support of her claim to have resided continuously in the United States in an unlawful status during the requisite time period for LIFE legalization.

In response to the NOID the applicant requested a copy of the altered airline ticket discussed by the director, and pointed out that some of the documents she had previously submitted were not included in the list of documents which the director indicated were considered in the decision. The applicant stated that she did not have any additional evidence to submit.

On October 19, 2006 the director denied the application, indicating that the applicant's response to the NOID failed to overcome the grounds for denial.

On appeal counsel reiterates the applicant's prior contention that the director did not provide her an opportunity to rebut adverse information, in particular with regard to the airline ticket, and did not consider all of the evidence submitted by the applicant, such as the church letter and the envelopes from 1981 and 1982.

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 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 from before January 1, 1982 through May 4, 1988.

To make this determination the AAO will examine the documentation submitted by the applicant, beginning with the five medical receipts. While all five of the receipts have hand-written dates in 1981, three of the document forms date from later years – specifically 1984 and 1987. Thus, the prescription from the Morrisania NFCC, dated May 13, 1981, is written on a form identified as HHC 283 (R May 87); the cytology requisition from the Morrisania NFCC, dated June 24, 1981, is written on a form identified as 92-500-3 (Rev. 4/87) © 1987 MetPath, Inc.; and the radiology diagnosis from the Lincoln Medical & Mental Health Center, dated September 14, 1981, is written on a form identified as Rev. 6/84. Accordingly, each of these three medical receipts is clearly fraudulent. In addition, the prescription signed by [redacted], dated September 30, 1981, identifies the applicant's address as [redacted] in Bronx, New York. In her earlier application for temporary resident status (Form I-687) submitted on October 25, 1989, however, the applicant stated that her residence at the [redacted] address did not begin until November 1, 1986, and that she had lived before that (from May 14, 1981 to October 31, 1986) at [redacted] in Bronx, New York. Thus, the prescription from [redacted] also appears to be bogus. The last of the medical receipts – the photocopied letter dated December 8, 1981 from the audiologist of the Morrisania NFCC – is the only one that is not fraudulent on its face. But its authenticity cannot be verified because there is no date stamp or other official mark to show that it actually dates from 1981.

The conflicting evidence discussed above regarding the applicant's address(es) in the Bronx during the 1980s is amplified by the affidavits from friends and relatives in August 1989. While [redacted] stated that the applicant lived with her at [redacted] from May 1981 to November 1986, and [redacted] stated that the applicant lived with her at [redacted] from 1986 to the present, the applicant's cousin, [redacted], stated that the applicant had resided at [redacted] since 1981. This information accords with that provided by the owner of [redacted], Dellas Sealle, who stated that the applicant's residence during her period of employment from 1981 to 1988 was [redacted]. Thus,

the evidence of record is totally inconsistent with respect to the applicant's residential address(es) during the 1980s.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

As for the other documentation in the record, the merchandise receipt from [redacted]s Boutique, dated July 23, 1981, has little evidentiary weight because the applicant's address is not identified and there is no date stamp or other authenticating mark from the store. The affidavits from friends and relatives who claim to have lived with, employed, or otherwise known the applicant in New York during the 1980s have minimalist, fill-in-the-blank formats with little personal input from the affiants. In addition to being full of contradictions about the applicant's address in those years, the affidavits contain few details about the applicant's life in the United States and her interaction with the affiants over the years. No documentation has been submitted from the 1980s – such as letters, photographs, rental agreements, earnings statements, and the like – to confirm the applicant's residential or employment relationship with the affiants. Thus, the foregoing documents have little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

In a similar vein, the letter from [redacted] at the Church of Christ the King in Bronx, New York, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter from [redacted] dated August 24, 1989, does not indicate when the applicant became a member of the church and, while stating her current address, does not indicate where the applicant lived over the years since 1981. The letter does not indicate how [redacted] knows the applicant personally, and whether his information about the applicant coming to church and being in the country since 1981 is based on personal knowledge, church records, or hearsay. Since [redacted] statement does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the statement has little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Thus, the bulk of the evidence relied upon by the applicant consists of fraudulent medical records, conflicting affidavits, and other documentation of minimal probative value. In the AAO's view, the poor quality of this evidence – in particular the fraudulent medical records and

conflicting affidavits – fatally undermines the overall credibility of the application, and outweighs any remaining evidence.

The AAO concludes that the applicant has failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.