U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

L 2

[redacted]

FILE: [redacted] Office: NEW YORK Date: MAR 03 2008

MSC 02 247 67610

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, New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate 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 applicant's lawful status in the United States expired before January 1, 1982, and that she meets the requirement of continuous unlawful residence in the United States for the requisite time period.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must also establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and 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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1) as follows: "An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed."

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States." The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." 8 C.F.R. § 245a.16(b).

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 filed her application for permanent resident status under the LIFE Act (Form I-485) on June 5, 2002. In a Notice of Intent to Deny (NOID), dated March 9, 2005, the director noted that the applicant had entered the United States lawfully with a B-2 visa on August 17, 1981, and had stated on the Form I-687 (Application for Status as a Temporary Resident) she filed with her "Form for Determination of Class Membership in CSS v. Thornburgh" in January 1991 that her authorized period of admission was six months, which would mean that the applicant's lawful status did not expire until February 16, 1982. Based on the foregoing evidence, the director indicated that the applicant appeared not to have been unlawfully resident in the United States before January 1, 1982, as required to be eligible for legalization under the LIFE Act. Furthermore, the director noted that the only evidence of the applicant's claimed continuous residence in the United States from August 1981 until May 4, 1988, was a series of affidavits from acquaintances, only three of whom purported to know the applicant before 1982, and all of which were substantively deficient on numerous grounds. The director granted the applicant thirty (30) days to submit additional evidence.

In response to the NOID, counsel submitted an affidavit from the applicant, dated March 31, 2005, asserting that she was mistaken in stating on her Form I-687 in 1990 that she was granted a six-month stay in the United States on her B-2 visa in August 1981, and that she had actually been granted only a three-month stay. That would have made the applicant's residence in the United States unlawful as of November 1981, when she overstayed her authorized period of admittance, and therefore eligible for permanent resident status under the LIFE Act because her continuous unlawful residence began prior to January 1, 1982. With respect to the three affidavits from acquaintances who claimed to know the applicant back in 1981, the applicant stated that the affiants could not furnish any more specific information considering the length of time that had elapsed.

In the Notice of Decision, dated May 27, 2005, the director denied the application on the ground that the applicant had failed to overcome the grounds of denial detailed in the NOID. The director noted that the applicant had submitted no documentary evidence – such as the original Form I-94 associated with her

entry into the United States in August 1981 – to support her claim that she was admitted for just three months at that time, rather than the six she indicated earlier on her Form I-687. The director also noted that the applicant had not submitted any further documentation to bolster the affidavits previously submitted as evidence of her continuous residence in the United States during the requisite time period.

On appeal counsel asserts that the applicant did not keep her Form I-94 because she did not recognize its importance, pleads for understanding that the applicant is not able to produce much verifiable evidence under the circumstances and the length of time that has passed since the 1980s, and requests that the AAO reconsider and approve her application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish that her unlawful residence in the United States began before January 1, 1982, and continued uninterruptedly through May 4, 1988. The AAO determines that she has not.

The record includes a photocopy of the B1-B2 multiple entry nonimmigrant visa issued to the applicant by the U.S. Embassy in Trinidad and Tobago on July 21, 1981. The visa contains a stamp confirming that the applicant first entered the United States on August 17, 1981, but it does not indicate the length of the applicant's authorized stay.[1] Considering the applicant's statement on her Form I-687 in 1990 that she was admitted for six months, her revised statement 15 years later, in response to the NOID, that she had only been admitted for three months, is not credible. Furthermore, the applicant's claim to have resided continuously in the United States from August 1981 through May 4, 1988, is contradicted by the documentation associated with a Form I-360, Petition for Special Immigrant Religious Worker, filed on the applicant's behalf in 1997. The Form I-360, on which the applicant stated that she entered the United States as a visitor on June 19, 1987, with an authorized stay until July 20, 1987 (confirmed by a stamp in her passport), was accompanied by a Form G-325A, Biographic Information, in which the applicant stated that she resided at [redacted] in Vistabella, Trinidad from January 1961 to June 1987, and a signed statement that upon her entry to the United States on June 19, 1987 she "did not originally intend to remain in the United States longer than my allotted time."

Doubt cast on any aspect of the applicant's evidence reflects on the reliability of the petitioner's remaining evidence. 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).

No such competent evidence has been submitted by the applicant – such as a Form I-94 – to support her revised claim to have been originally admitted to the United States for three months, rather than six. Thus, the applicant has not carried her burden of proof, by a preponderance of the evidence, that her unlawful residence in the United States commenced before January 1, 1982.

---

[1] The passport contains additional stamps showing that the applicant made numerous trips outside the United States during the years 1982-1987.

As for evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988, no contemporaneous documentation from the 1980s has been submitted that demonstrates her continuous residence in the United States during that time period. The only evidence in the record of the applicant's presence in the United States prior to 1989 is a series of affidavits from four acquaintances that were prepared in May 1993, only three of whom claimed to have known the applicant in the United States before January 1, 1982. As explained by the director in the NOID, the affidavits have myriad shortcomings, including the lack of any proof that the affiants had direct personal knowledge of the events and circumstances of the applicant's residence in the United States, a failure of the affiants to identify themselves with supporting documentation and offer any proof that they were in the United States during the statutory period, the lack of any documentary evidence – such as photos – that there was a relationship between the applicant and the affiants, and the absence of any current phone numbers for the affiants.

On appeal, the applicant has not provided any additional information from the affiants to remedy the shortcomings described above. Indeed, the applicant states that no further information is available from the affiants. The AAO concurs with the director's determination, therefore, that the affidavits do not represent credible evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. Nor has the applicant submitted any additional evidence to resolve the contradictory information in the documentation associated with the special immigrant religious worker petition in 1997, in which the applicant indicated that she did not come to the United States to stay until 1987.

Thus, the applicant has failed to establish her continuous unlawful residence and continuous physical presence in the United States for the time periods specified in section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

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