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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CHICAGO Date: MAR 12 2008

MSC 01 289 60436

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: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Chicago, and is now before the Administrative Appeals Office on appeal. The AAO will withdraw the decision of the director and sustain the appeal.

The district director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 or maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988.

On appeal, counsel states that the applicant submitted substantial documentary evidence, and argues that the director failed to thoroughly evaluate the wealth of evidence submitted. In support of the appeal, counsel submits one new attestation from the applicant's church.

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).

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On the affidavit for class membership, which she signed under penalty of perjury on August 3, 1993, the applicant claimed that she first entered the United States without inspection on November 5, 1979. On Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on August 4, 1993, the applicant claimed to reside at the following addresses during the relevant period:

September 1979 to November 1979: [redacted]
December 1979 to May 1986:
June 1986 to November 1989:

The applicant lists her employers during this period as follows:

September 1981 to 1985: [redacted]

In an attempt to establish continuous unlawful residence since before January 1, 1982 and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as claimed, the applicant furnished substantial evidence:

On December 22, 2004, CIS issued a Notice of Intent to Deny the application. The district director noted that despite the applicant's claim that she continually resided in the United States since 1979, the record did not contain credible evidence to support a finding that the applicant was continually present from before January 1, 1982 through May 4, 1988. The applicant was afforded 30 days to respond with additional evidence to support her eligibility.

In response, counsel for the applicant alleged that the applicant had submitted a wealth of evidence to support her eligibility, and resubmitted copies of the previously-submitted evidence. The director denied the application on February 28, 2005, noting that there was insufficient evidence to show that the applicant was unlawfully present in the United States from before January 1, 1982, the beginning of the qualifying period, through May 4, 1988 or that she was continuously physically present in the United States from November 6, 1986 through May 4, 1998. Specifically, the director focused on the deficiency of the affidavits, and based the decision in part on the lack of primary and/or secondary evidence.[1]

On appeal, counsel asserts that the documentary evidence submitted prior to adjudication satisfy the applicant' burden of proof, and urges reversal of the director's decision. In support of the appeal, counsel submits an attestation dated February 6, 2005 from [redacted] of St. Bartholomew's Episcopal Church, claiming that the applicant has been a member of the church since 1985.

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.

Counsel argues that the documentary evidence submitted in support of the application is sufficient to warrant approval, and upon review, the AAO concurs with this assertion.

It appears from the record that the applicant was present in the United States before January 1, 1982 based on the evidence of the birth of her first child in California in 1981. The record also contains credible documentation, such as checks payable to the applicant and a California identification card, both of which were issued prior to January 1, 1982, thereby supporting a finding that the applicant entered the United States before January 1, 1982. The question on appeal, therefore, is whether sufficient evidence exists to find that the applicant continuously resided unlawfully in the United States from January 1, 1982 through May 4, 1988 and maintained continuous physical presence in the United States from November 6, 1986 to May 4, 1988.

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[1] Although the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) to the instant application, it is harmless error because the AAO evaluates the sufficiency of the evidence in the record according to its probative value and credibility as required at 8 C.F.R. § 245a.12(f).

The record contains two affidavits in support of the applicant's presence in the United States during the relevant period. The notarized letter of [redacted] claims that the applicant cared for her minor children from 1987 to 1989. The affidavit of [redacted] alleged landlord for the applicant from 1980 to 1986, claims that he has known the applicant to reside at [redacted] in Maywood, California, from 1979 until the present. A lease agreement provided in the record indicates commencement of this lease in 1980, and although it does not list the applicant as a party, her husband, [redacted], is listed as the lessee. The applicant and [redacted] had three children together, all of which were born in California during the relevant period. Specifically, the record contains birth certificates for the applicant's three children indicating that they were born in Los Angeles in 1981, 1984, and 1985. The record also contains immunization records for the applicant's oldest child, [redacted] which indicate vaccinations were administered in the United States in 1981, 1982 and 1985. Finally, in addition to the lease agreement signed by the applicant's husband, rent receipts for various periods in the years 1982, 1983 and 1986 are included in the record.

The applicant also submits copies of several checks from her former employer, [redacted] issued to the applicant in 1981, 1982, 1983, 1984, and 1985. These checks corroborate the applicant's claim on Form I-687 and the May 15, 1992 letter from [redacted] both of which assert that the applicant was employed by the company from 1981 to 1985.

On appeal, the applicant submits a letter from [redacted] of St. Bartholomew's Episcopal Church. According to 8 C.F.R. §254a.2(d)(3)(v), attestations of churches of other organizations provided to establish an applicant's residence in the United States should include the applicant's inclusive dates of membership, the address(es) where the applicant resided during membership, how the author knows the applicant, and the origin of the information being attested to. The letter from [redacted] omits all of these critical elements, although he does provide the applicant's current address. He does not indicate his title, nor does he provide any details regarding his relationship with the applicant and/or whether he knew her personally.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. Despite the deficiencies in the letter from [redacted], the totality of the evidence in the record supports a finding that the applicant was continually residing in an unlawful manner and continuously present in the United States during the relevant period. Despite the fact that the copies of paychecks and rent receipts are somewhat sporadic, they are corroborated by affidavits, employment letters, medical records, and birth certificates evidencing the birth of the applicant's three children. Overall, the applicant submits relevant, probative, and credible evidence that leads the AAO to believe, in accordance with *U.S. v. Cardozo-Fonseca*, that the claim is "probably true" and that the applicant has satisfied the standard of proof. *See* 480 U.S. 421 (1987).

For the foregoing reasons, the decision of the director will be withdrawn and the appeal sustained.

ORDER: The appeal is sustained.