identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: Los Angeles Date: MAR 2 8 2008

MSC 02 235 61959

IN RE: Applicant: [redacted]

PETITION: 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:

SELF-REPRESENTED

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 [or Records] 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, Los Angeles, California, 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 had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant contends that she has submitted sufficient evidence to Citizenship and Immigration Services or CIS (formerly the Immigration and Naturalization Service or the Service) to establish that she resided in the United States since 1981. The applicant submits documentation in support of her appeal.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(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 amenability to verification. 8 C.F.R. § 245a.12(e).

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. 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 "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 petitioner 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 petitioner 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 or petition.

The issue to be examined in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the entire requisite period. Here, the applicant has failed to meet this burden.

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 (Act) on or about July 2, 1991. At part #32 of the Form I-687 application where applicants were asked to provide information relating to their immediate family, the applicant listed only one child, a son [redacted], and indicated that her child had been born in the United States on June 15, 1988. At part #33 of the Form I-687 application where applicants were asked to list all residences in this country since first entry, the applicant listed [redacted] in Los Angeles, California from May 1981 to August 1989. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed a single absence from this country of twenty-eight days from May 29, 1987 to June 26, 1987 when she traveled to Mexico because her mother was very ill.

In support of her claim of residence in the United States since prior to January 1, 1982, the applicant included an employment letter and a separate letter both of which are signed [redacted] In her letters, [redacted] stated that she met the applicant through the applicant's sister in May of 1981. [redacted] noted that the applicant's sister had called her and asked if she knew anyone who needed a babysitter or housekeeper because her younger sister, the applicant, had just arrived from Mexico. [redacted] declared that the applicant worked for her as a domestic employee by providing babysitting and housekeeping services at least twice a month from May 1981 to September 1990. However, [redacted] failed to provide the applicant's address of residence during that period she employed the applicant as a domestic employee as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided an employment letter and a separate affidavit both of which are signed [redacted]. In these documents, [redacted] indicated that he first met the applicant in 1981 and had personal knowledge that the applicant resided in Gardena, California from May 1981 to

August 1989, [redacted] asserted that the applicant worked for him two times a month as a housekeeper from May 1982 to September 1990. Although [redacted] listed the general locale of the applicant's residence both prior to and during her period of employment, he failed to provide the applicant's address of residence during those dates he employed the applicant as a housekeeper as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted an affidavit signed by who declared that she met the applicant in 1981 and had personal knowledge that the applicant resided in Gardena, California from 1981 to 1989. While [redacted] provided general non-specific information relating to the applicant's residence in the requisite period including the year they met and the locality where the applicant purportedly resided, she failed to provide any relevant and verifiable testimony to substantiate the applicant's residence in the United States since prior to January 1, 1982.

The applicant included an affidavit that is signed by [redacted]. [redacted] stated that he met the applicant many years ago and had personal knowledge that she resided in Los Angeles, California from 1981 to 1989. However, other than attesting to the name of the general metropolitan area where the applicant purportedly resided in that period from 1981 to 1989, Mr. [redacted] failed to provide any specific and verifiable testimony to corroborate the applicant's claim of residence in the United States for the period in question.

The applicant provided an affidavit signed by [redacted] who attested to the applicant's absence from this country when she traveled to Mexico to see her ill mother on May 29, 1987 and her subsequent return to this country approximately one month later. Nevertheless, Mr. [redacted] failed to provide any testimony relating to the applicant's residence in this country from prior to January 1, 1982 up until May 29, 1987.

The applicant submitted contemporaneous documents including postal receipts, receipts for money orders, a WIC appointment card, and a medical record that tend to demonstrate her residence in this country after November 1986. However, the applicant she failed to submit sufficient credible and verifiable evidence of her residence in this country from prior to January 1, 1982 up through November of 1986.

Subsequently, on May 23, 2002, the applicant filed her Form I-485 LIFE Act application. At part #3B of the Form I-485 LIFE Act application, were asked to provide information relating to her immediate family, the applicant indicated that listed four children; a daughter [redacted] born in Mexico on June 11, 1983, a son [redacted] born in Mexico on April 9, 1985, a son [redacted] born in the United States on June 15, 1988, and a daughter [redacted] born in the United States on April 18, 1993. Clearly, the applicant had to have been absent from the United States when she gave birth to her two children, [redacted] and [redacted], in Mexico on June 11, 1983 and April 9, 1985, respectively. In addition, the applicant failed to advance any explanation as to why she did not list either of these two children or her absences from this country resulting from the birth of her two children in Mexico. The fact that the applicant failed to list these two children at part #32 of the Form I-687 application and her corresponding absences from this country at part #35 of the

Form I-687 application seriously impairs her credibility, the credibility of her claim of residence in the United States since prior to January 1, 1982, and the credibility of documents submitted in support of such claim.

The applicant submitted an affidavit that is signed by [redacted]. [redacted] provided the applicant's most current address and stated that he had known her since April 5, 1985. [redacted] commented that the applicant was a very honest and hardworking homemaker.

The applicant included an affidavit signed by [redacted] who declared that he first met the applicant at the house of mutual friends in April 1984. [redacted] provided the applicant's most current address and noted that the applicant was a very honest and hardworking homemaker.

The applicant provided an affidavit that is signed by [redacted]. [redacted] provided the applicant's most current address and stated that the applicant was a very honest person and hardworking homemaker. [redacted] asserted that she had known the applicant since February 1982.

The applicant submitted an affidavit signed by [redacted] who stated that she had known the applicant since May 1983 and provided the applicant's most current address. [redacted] indicated that the applicant was a hardworking homemaker who was very honest.

While the four affiants, [redacted], and [redacted], all claim to have known the applicant for varying lengths of time ranging from February 1982 through April 5, 1985, none of this individuals have provided any direct testimony relating to the applicant's residence in the United States during the requisite period. Furthermore, none of the affiants attested to knowing the applicant prior to January 1, 1982, much less her residence in this country prior to such date.

The applicant included an affidavit that is signed by [redacted]. [redacted] declared that she had known the applicant since January 10, 1981 and that she was a very honest person and hardworking homemaker. [redacted] provided the applicant's most current address. However, [redacted] failed to provide any specific and verifiable testimony relating the applicant's residence in the United States from prior to January 1, 1982 to May 4, 1988 despite claiming to have known her since January 10, 1981.

The record shows that the applicant appeared for an interview relating to her Form I-485 LIFE Act application at the CIS District Office in Los Angeles, California on April 2, 2004. The notes of the interviewing officer reflect that the applicant admitted that she had been absent from the United States for approximately thirty days on the occasion of the birth of her children [redacted] and [redacted] in Mexico in 1983 and 1985, respectively. The applicant also admitted that she had also been absent from this country for two weeks when she traveled to Mexico to bring her son [redacted] into the United States in 1986 and another absence of two weeks when she traveled to Mexico to

bring her daughter [redacted] into this country in 1988. The fact that the applicant acknowledged three absences from the United States in 1983, 1985, and 1986, at the time of her interview that were not listed on the Form I-687 application serves to further undermine the applicant's credibility. The notes of the interviewing officer do not contain any indication that the applicant attempted to explain why she did not list these three absences from this country at part #35 of the Form I-687 application.

The district director subsequently issued a notice to the applicant on June 24, 2004, informing her of CIS' intent to deny his Form I-485 LIFE Act application. The district director noted that the applicant had failed to submit sufficient evidence to corroborate her claim of continuous residence in this country from prior to January 1, 1982 to May 4, 1988. The applicant was granted thirty days to respond to the notice.

The record shows that the applicant failed to respond to the notice and the district director denied the Form I-485 LIFE Act application on September 25, 2004.

On appeal, the applicant contends that she has submitted sufficient evidence to CIS to establish that she resided in the United States since 1981. While the applicant provides new documentation relating to the presence of affiants, [redacted] and [redacted] in this country during the requisite period, none of these affiants provided direct testimony regarding the applicant's residence in this country since prior to January 1, 1982. The remaining supporting documents contained in the record lack specific detail and verifiable information to substantiate the applicant's claim of residence in the United States for the requisite period. More importantly, the applicant damaged her own credibility, the credibility of her claim of residence in this country, and the credibility of documents submitted in support of such claim when she failed to list two of her children at part #32 of the Form I-687 application and three separate absences from this country during the requisite period at part #35 of the Form I-687 application.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficient credible supporting documentation containing verifiable testimony seriously undermines the credibility of the applicant's claim of residence in this country for the period in question. The applicant herself has diminished the credibility of her claim of continuous residence in this country since prior to January 1, 1982 by failing to disclose information relating to two of her children and three absences from this country on the Form I-687 application. 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. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's failure to provide sufficient credible evidence to corroborate her claim of residence and her failure to disclose information relating to significant events that occurred during the period in question on the Form I-687 application, 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 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, 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.