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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: DALLAS Date: MAY 05 2008

MSC 02 243 68985

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 PETITIONER:

[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. Any further inquiry must be made to that office.

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, Dallas, 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 he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The director noted that the applicant signed a statement indicating that she had departed the United States to have children in 1982 and 1983. On both occasions the applicant's absence from the United States exceeded 45 days. Consequently, the director issued a Notice of Intent to Deny (NOID) the application on January 12, 2006, and afforded the applicant 30 days in which to submit credible evidence to show that she had continuously resided in the United States since before January 1, 1982 and May 4, 1988. The applicant's response failed to overcome the director's findings, and consequently the application was denied on March 27, 2006.

On appeal, counsel for the applicant alleges that the director erred by concluding that her visits outside of the United States interrupted her continuous residence, and submits additional documentary evidence to support the allegation that the applicant continuously resided in the United States during the requisite period. Counsel contends that the applicant's two visits outside of the United States were for emergent reasons, and therefore, do not interrupt her continuous residence.

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).

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 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish her continuous unlawful residence and continuous physical presence in the United States for the requisite periods. Here, the submitted evidence includes the applicant's statement on Form I-687, Applicant for Status as a Temporary Resident, which she signed under penalty of perjury on June 9, 1990. On this form, the applicant claimed that she departed the United States for Mexico on two occasions, from September 1982 to September 1982 (no dates specified), and from December 1984 to January 1985 (no dates specified), since her arrival in December 1981. It is also noted that the applicant also indicated that her son, [redacted] was born on December 29, 1984, and her daughter [redacted] was born on September 2, 1982, both in Mexico.

The submitted evidence also includes the applicant's sworn statement on Form I-648, Memorandum Record of Interview Made in Examinations, dated September 9, 1993, indicating that on four occasions she left the United States for 3 weeks in 1982, in 1983, and in 1984; and in July 1987 for 2 weeks.

The record also contains a signed statement by the applicant indicating that she was absent from the United States on three occasions, twice to give birth from December 8, 1983 to the second week in February 1984, and from August 18, 1982, to the last week in October 1982; and from June 1987 to July 1987, to visit family.

The director issued a NOID on January 12, 2006, and afforded the applicant thirty days to explain her absences in 1982, and in 1983, noting that each absence exceeded 45 days. In addition, the director requested evidence to establish the applicant's entry prior to January 1, 1982. In response, the applicant submitted a handwritten letter by [redacted] dated February 2, 2006. [redacted] stated that the first delivery was on September 2, 1982, and the applicant was discharged on October 22, 1982, and the second delivery was on December 29, 1983, and she was discharged on February 10, 1984, noting that that delivery had no complications.

The applicant failed to overcome the basis for the director's denial, and the application was denied on March 27, 2006.

On appeal, counsel for the applicant alleges that the director erred in her conclusions, and seeks to overcome the director's findings by providing evidence to the contrary.

Upon review, the AAO concurs with the director's findings.

The regulation at 8 C.F.R. § 245a.15(c)(1) provides that 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.

According to the applicant's signed statement, she was absent for over 45 days, twice to give birth from December 8, 1983 to the second week in February 1984, and from August 18, 1982, to the last

week in October 1982. There is insufficient evidence to disprove the applicant's sworn statement regarding these absences. The appeal fails to overcome the conclusions of the director, therefore, the AAO must conclude that continuous residency during the requisite period has not been established.

Counsel addresses all of the applicant's claims of extensive absences on appeal, and asserts that the absences were for emergent reasons. On appeal, the counsel submits another letter from Dr. [redacted] stating that the applicant was under his care while she was in Mexico in 1982, and in 1984, until he advised her that she could travel to Dallas, Texas.

Counsel's assertion that the applicant's extended stays were for emergent reasons is not persuasive. First, it is noted that [redacted] does not state why he did not discharge the applicant for almost 2 months on each occasion, although he does not indicate any complications in 1982, and states that there were no complications in 1984. Second, the applicant has failed to provide a consistent description of her various absences. As noted above, the record indicates that the applicant stated on her Form I-687 that she departed the United States for Mexico on two occasions, from September 1982 to September 1982 (no dates specified), and from December 1984 to January 1985. The applicant also indicated on the Form I-867 that her son [redacted] was born on December 29, 1984. However, in the applicant's sworn statement on Form I-648, she indicated that on four occasions she left the United States for 3 weeks in 1982, in 1983, and in 1984; and in July 1987 for 2 weeks. Yet, in her signed statement the applicant indicated that she was absent from the United States on three occasions, twice to give birth from December 8, 1983 to the second week in February 1984, and from August 18, 1982, to the last week in October 1982; and from June 1987 to July 1987, to visit family. Neither the applicant nor counsel acknowledged these inconsistent statements. These conflicting statements provided on her Form I-687, on her Form I-648, and on her signed statement during the interview, seriously challenge the credibility of the application as a whole. In addition, her inconsistent statements pertaining to the date of birth of her son [redacted], adds further doubt as to the applicant's credibility. These discrepancies cast doubts on the applicant's testimony regarding her absences from the United States. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

According to the regulation at 8 C.F.R. § 245a.15(c)(1), no single absence from the United States can exceed forty-five days, and the aggregate of all absences cannot exceed one hundred and eighty (180) days between January 1, 1982, and May 4, 1988 without interrupting continuous residency. Since there is conflicting testimony regarding the dates and number of departures, and no reliable documentary evidence to corroborate the claim on Form I-687, on Form I-648, and in her signed statement, the AAO must conclude that continuous residency during the requisite period has not been established.

It is further noted that based on the inconsistencies in the record, the AAO is forced to question the validity of the remaining documentary evidence upon which the application is based. Since the application will be denied for the reasons stated above, this issue need not be pursued in detail.

However, as stated above, doubt cast on any aspect of the applicant's or petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Given the absence of contemporaneous documentation and unresolved inconsistencies in the record, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that she continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Therefore, the applicant 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.