U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: MAY 0 9 2008

MSC 02 032 60134

[redacted]

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, New York, New York, 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 not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the applicant entered the United States in July 1981 without inspection, and has resided in New York since that time. Counsel asserts that the applicant reentered the United States on July 23, 1989, with a B-2 visitor visa and that the applicant did not state at the time of her interview that she first entered on July 7, 1989.

The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B)(i) of the LIFE Act; 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).

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).

According to the interviewing officer's notes, at the time of her LIFE interview, the applicant stated that she first entered the United States on July 7, 1989.

On May 18, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that based on her testimony she was incapable of meeting either the necessary residency or continuous physical presence requirements. The notice was sent to the applicant and to former counsel at their addresses of record. However, no response was submitted prior to the issuance of the director's Notice of Decision dated July 10, 2006.

On appeal, counsel asserts that the applicant did not receive the Notice of Intent to Deny from Citizenship and Immigration Services (CIS) or from her prior attorney on time to produce evidence of her presence in the United States with the 30-day time period. Counsel asserts that the applicant resides at [redacted] Brooklyn, NY 11226 and that the applicant is surrounded by three buildings, designated as building A, B, and D. Counsel contends that "CIS did not include the Building in the pick up notice or the letter."

Counsel's assertion, however, is not supported by the record. The notice was sent to the exact address listed by the applicant on her Form I-485 application. The applicant did not include a "specific" building on said application. The record clearly establishes that the notice was properly served on the applicant in compliance with 8 C.F.R. § 103.5a(a)(1), and the applicant's alleged failure to receive the notice in a timely manner was of her own making. Furthermore, CIS is not responsible for the inaction of the applicant's former counsel.

The evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and that she was in a continuous unlawful status since that date through May 4, 1988. In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided affidavits from [redacted] and [redacted], who attested to the applicant's residences in Manhattan, New York during the requisite period. The affiants asserted that they resided in the same building as the applicant for years. The applicant also provided affidavits from [redacted] and [redacted] who indicated that the applicant resided at their residence from July 1981 to November 1986 an om November 1986 to December 1988, respectively. None of the affiants provided any detail regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence. Although not required, the affiants, [redacted] and [redacted], did not include any supporting documentation of their presence in the United States, such as a rental agreement or household bills which would bolster each affiant's claim.

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, 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, through May 4, 1988.

The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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 record reflects that a Form I-360, Petition for Amerasian, Widow of Special Immigrant, was filed on behalf of the applicant on August 24, 1994, and March 14, 1997, and she was issued alien registration number [redacted]. On each Form I-360, the petitioner listed the applicant's "date of arrival" in the United States as July 23, 1989. On her initial Form G-325A, Biographic Information, that accompanied the Form I-360 filed in 1994, the applicant indicated that she was employed by [redacted] as a domestic in Trinidad from February 1981 to May 1987. On her Form G-325A that accompanied the Form I-360 filed in 1997, the applicant indicated that she was employed by [redacted] as a domestic in Trinidad from February 1981 to May 1989. In two separate signed statements, the applicant indicated that she came to the United States on July 23, 1989.

These factors raise serious questions regarding the authenticity of the supporting documents submitted with the LIFE application and tend to establish that the applicant utilized the affidavits in a fraudulent manner in an attempt to support her claim of residence in the United States during the requisite period. Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met her burden of proof. Given this, 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.