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

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FILE: [redacted] Office: NEW YORK Date: MAY 09 2008

MSC 03 094 670051

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: 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 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, the applicant asserts that she never received the Notice of Intent to Deny.

On March 24, 2008, the AAO sent a courtesy copy of the Notice of Intent to Deny dated June 16, 2004, to the applicant's address of record. The notice, however, was returned by the post office as undeliverable. No new address has been presented by the applicant.

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)(1) 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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

At the time the applicant filed her Form I-485 application, the applicant submitted a signed statement dated November 27, 2002, which stated, in pertinent part:

> I have living in U.S.A. since 1982 and I entered to this country with a visa Class B. I already have received my employment authorization and social security but I do not have my permanent residence yet. I attached to this letter my I-485 form filled out and all supportive documentation I do have available as of today, in order to prove that I have resided in the United for twenty years already.

Along with her Form I-485 application, the applicant submitted a Form G-325A, Biographic Information, signed May 4, 2002. The applicant indicated that she resided in her native country, Peru, from June 1932 to August 1982.

At the time of her LIFE interview on May 4, 2004, the applicant signed a statement which indicated she had first entered the United States on August 22, 1982.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- Several receipts dated November 11, 1983, November 26, 1985, March 22, 1986, June 28, 1986, June 15, 1987, December 15, 1987, and March 3, 1988.
- Several money order receipts dated December 7, 1983, May 2, 1984, September 14, 1984, and May 24, 1985, and
- An airline ticket issued on November 4, 1985 from Eastern Airlines, Inc.
- Photocopied envelopes postmarked June 8, 1983, November 22, 1983, January 1, 1985, August 20, 1985, October 28, 1985, and November 27, 1985, to the applicant's addresses in San Jose and San Francisco, California and December 17, 1987, to the applicant's address in Plainview, New York.
- Notarized affidavits from [redacted] and [redacted] of Elmhurst, New York, who indicated that they have been acquainted with the applicant since September 1981.
- A notarized affidavit from [redacted] of South San Francisco, who attested to the applicant's residences in South San Francisco from August 1982 to December 1985 and in Elmhurst, New York, since 1985. The affiant asserted that the applicant was in her employ as a babysitter and resided in her home, [redacted], from August 1982 to December 1985.
- A notarized affidavit from the president and secretary of Brotherhood of our Lord of Miracles, Inc., in New York, New York, indicating the applicant has been a member since November 1981.
- A notarized affidavit from [redacted] of Elmhurst, New York, who indicated that the applicant was in her employ as a housekeeper and resided in her home, [redacted] from September 1981 to July 1982 and from December 1985 to November 1986.
- A notarized affidavit from [redacted] of Plainview, New York, who indicated that the applicant was employed as a nurse's aide by his late wife from January 1986 to December 1988.
- Several PS Form 3806, Receipt for Registered Mail, postmarked December 11, 1983, January 16, 1984, March 1, 1984, September 15, 1984, October 23, 1984, November 24, 1984, April 21, 1985, and May 24, 1985.

- A passport from Peru reflecting that the applicant was issued her passport on August 12, 1982, and was issued a B-1/B-2 multiple entry non-immigrant visa on August 17, 1982. The record reflects that the applicant lawfully entered the United States on August 22, 1982.

The applicant submitted two additional receipts for registered mail; however, they have no probative value as the applicant's name is not listed on one and the postmarked date is indecipherable on the other. The applicant also submitted affidavits from other affiants; however, they will not be considered as the affiants attested to have met the applicant subsequent to the requisite period.

The director issued a Notice of Intent to Deny dated June 16, 2004, which advised the applicant of the contents of her sworn testimony and that she had failed to establish eligibility of residing continuously in an unlawful status before January 1, 1982 through May 4, 1988. The applicant was granted 30 days in which to submit a rebuttal. The applicant, however, failed to respond to the notice, and accordingly, on June 9, 2005, the director denied the application.

The fact that on two separate occasions the applicant signed a statement indicating that she first entered the United States in August 1982 along with the fact that the applicant indicated on her Form G-325A that she was residing in Peru until August 1982 tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support her claim of residence in the United States prior to August 22, 1982. By engaging in such an action, the applicant has irreparably harmed her own credibility as well as the credibility of her claim of continuous unlawful residence in the United States during the requisite period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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).

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. 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.

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