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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: LOS ANGELES Date: MAY 12 2008

MSC 02 242 64055

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 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 director concluded that 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. This decision was based on the director's conclusion that the applicant had entered the United States pursuant to a valid nonimmigrant visa. The director also concluded that the applicant had exceeded the 45-day limit for a single absence, as well as the aggregate limit of 180 days for total absences, from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel asserts that the applicant returned to an unrelinquished residence in the United States and that there was a misunderstanding of the applicant's absences from the United States.

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).

"Continuous unlawful residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

> *Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:
>
> (1) 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.

In pertinent part, 8 C.F.R.§ 245a.2 provides:

> (b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:
>
> (9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I - 94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

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 or petition.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides 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.

In an affidavit to establish class membership, which she signed under penalty of perjury on April 3, 1990, the applicant stated that she first entered the United States in December 1980, when she crossed the border into California without inspection. The applicant also stated on her **Form I-687, Application for** Status as a Temporary Resident, which she filed on April 3, 1990, that she lived at [redacted] in Canoga Park, California from November 1981 to December 1982, and at [redacted] in Van Nuys, California from December 1982 to June 1989. The applicant listed the following employers during the qualifying period:

January 1981 to December 1982 [redacted]
1983 to 1985
July 1985 to August 1987
July 1987 to May 1988

The applicant stated on her Form I-687 application that she was absent from the United States from March to April 1983, when she went to Caracas, Venezuela on vacation, and from November 1983 to January 1984 and again from February 1985 to March 1985 when she went to Lima, Peru on vacation. The applicant repeated these assertions in a March 6, 1990, affidavit.

In a May 24, 2005, statement given during her LIFE Act interview, the applicant stated that she came to the United States through Mexico in November 1980 without a visa. She did not state when she left, but stated that she came to the United States again in November 1981 with a visa. She returned home in February 1982 and returned on April 30, 1983, with a visa. She stated that she remained until the end of the 1983 when she returned home, and returned to the United States on January 3, 1984, with a visa. She went home again at the end of 1984 and returned on March 19, 1985, again with a visa.

The applicant submitted a copy of her passport, which reveals the following:

> The applicant was issued a B-2, nonimmigrant visitor's visa, in Caracas, on November 24, 1981. It was valid for one visit until February 24, 1982. The passport indicates that the applicant entered the United States on November 30, 1981. A handwritten notation indicates "4 days Miami;" however, there is no indication as to when and why this was written.
>
> The applicant was issued a B-2 visa on April 18, 1983, in Caracas, valid for one visit until July 18, 1983. The passport indicates the applicant entered the United States on April 30, 1983.
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> The applicant was issued a B1/B2 visa in December 1983, in Lima, valid for one visit until January 28, 1984. The applicant was admitted to the United States on January 3, 1984.
>
> The applicant was issued a B1/B2 visa on March 15, 1985, in Lima, valid for multiple visits until March 15, 1986. She entered the United States on March 19, 1985.

In a November 22, 2005, letter, the applicant alleged she entered the United States in 1980 and remained until November 4, 1981. She then returned on November 30, 1981, remaining until March 30, 1983. She stated that she returned to the United States on April 30, 1983, and remained until November 30, when she again left. She stated that she returned on January 3, 1984, and left on February 17, 1985. She stated that she last returned to the United States on March 19, 1985.

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

1. A copy of an April 25, 1988, notarized statement from [redacted], in which she stated that the applicant had worked for her from December 5, 1981, to March 14, 1983, and from April "31" to December 21, 1983. Ms. [redacted] did not provide her address or phone number. Additionally, the applicant did not identify Mrs. [redacted] as one of her employers on her Form I-687 application.

2. A copy of an April 26, 1988, letter from [redacted], in which she stated that she met the applicant in 1981 at Long Beach Hospital. Mrs. [redacted] did not state that, to her knowledge, the applicant had continuously resided in the United States during the required period.

3. A copy of an October 28, 1989, affidavit from [redacted], in which she stated that to her personal knowledge, the applicant had been in the United States since January 1982, and that she based this on their visits to each other. However, the affiant also stated that the longest period that she had not seen the applicant was for seven and a half years. The affiant, who stated that the applicant lived in "Los Angeles County," did not state the circumstances surrounding her initial acquaintance with the applicant.

4. A copy of an October 9, 1989, notarized statement from [redacted], in which she stated that the applicant worked for her "on a live-in basis from January 1982 to December 1982." We note that the applicant alleged to have began working for Mrs. [redacted] in January 1981.

5. A copy of an October 17, 1989, affidavit from [redacted], in which he stated that he had known the applicant since January 1982, and that the applicant had been resided continuously in the

United States since that time. The affiant did not state his relationship with the applicant or the basis of his knowledge of her residency in the United States.

6. A copy of a November 6, 1989, affidavit from [redacted], in which she stated that the applicant had lived in Los Angeles County since January 1982. The affiant did not state her relationship with the applicant or the basis of her knowledge of the applicant's residency in the United States.

7. A copy of an October 16, 1989, affidavit from [redacted], in which she stated that she met the applicant in April 1982, and that they became friends. She stated that the applicant lived in Los Angeles County but provided no information as to their initial acquaintance.

8. A copy of a November 18, 1989, sworn statement from [redacted] in which she stated that the applicant rented a room from her at [redacted] in Van Nuys from December 6, 1982, to June 30, 1989.

9. A copy of a November 18, 1989, notarized statement from [redacted], in which she stated that the applicant worked for her as a housekeeper from 1983 through July 1985.

10. A copy of an October 5, 1989, letter from Castle Precision Industries, certifying that the applicant worked for the company from July 31, 1985, to August 7, 1987. The letter, signed by [redacted] who identified himself as the personnel manager, did not state the applicant's address at the time of her employment with the company or whether the information regarding the applicant's employment was taken from company records, as required by 8 C.F.R. § 245a.2(d)(3)(i).

11. A copy of a May 24, 1988, sworn statement from [redacted], in which he stated that the applicant had worked for him as a part-time cook beginning on August 31, 1987.

12. Copies of medical documentation, indicating that the applicant had been evaluated in connection with an application for immigration benefits in April 1988.

The applicant alleges that she entered the United States unlawfully in 1980 and established residency prior to reentering the United States in a lawful status in November 1981. The evidence submitted by the applicant, however, fails to establish by a preponderance of the evidence that she was residing in the United States in an unlawful status prior to January 1, 1982. The applicant alleged on her Form I-687 application that she worked for [redacted] from January 1981 to December 1982. However, [redacted] stated that the applicant began working for her in January 1982. [redacted] alleges that the applicant worked for her as a housekeeper from December 5, 1981 to March 14, 1983, and again from April 30 to December 1983. However, the applicant did not identify [redacted] as an employer during the qualifying period. Further, [redacted]'s statement provided no identifying information such as an address or phone number. 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). The applicant submitted no evidence to resolve this inconsistency. Therefore, the statements of Mrs. Marsh and [redacted] have no probative value.

The applicant's passport indicated that she entered the United States in November 1981 pursuant to a valid B-2 visa. According to the applicant's March 2005 statement, she left the United States in February 1982. Even if the applicant overstayed her visa, there is no competent evidence in the record to indicate that she

established residency during that period. The affidavits submitted by the applicant attesting to her residency in 1982 are without substantive detail, failing to provide evidence of the affiant's personal knowledge of the applicant's arrival and continued residence in the United States. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but also by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. 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. 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 prior to January 1, 1982.

Accordingly, the applicant has not established that her subsequent reentries into the United States pursuant to valid immigration visas were a return to an unrelinquished unlawful residence.

The second issue on appeal is whether the applicant exceeded the 45 days for a single absence and 180 days total absences from the United States during the requisite period.

The director's determination that the applicant had been absent from the United States for over 45 days and that her total absences exceeded 180 days was based on the applicant's statements during her May 24, 2005, interview. During that interview, the applicant stated that she left the United States in February 1982 and returned in April 1983. She also stated that she left at the end of 1984 and returned in March 1985.

In a November 22, 2005, response to the director's Notice of Intent to Deny, the applicant alleged that she entered the United States on November 30, 1981 and remained until March 30, 1983. She stated that she left the United States and returned on April 30, 1983, where she remained until November 30, 1983. She then again left and returned on January 3, 1984. She alleges that her last exit during the qualifying period was from February 17 to March 19, 1985.

The applicant submitted no competent objective evidence to resolve the inconsistencies in her statements. *Matter of Ho*, 19 I&N Dec. at 591-92. Both of her statements are consistent with the entries noted on her passport. However, as discussed above, the affidavits and other statements submitted to document the applicant's presence in the United States during the qualifying period are not credible.

An absence of more than 45 days must be "due to emergent reasons." Although this term is not defined in the regulations, *Matter of C-* , 19 I&N Dec. 808 (Comm. 1988), holds that *emergent* means "coming unexpectedly into being." In other words, the reasons must be unexpected at the time of departure from the United States and of sufficient magnitude that they made the applicant's return to the United States more than just inconvenient. The applicant does not now admit that her absences exceeded 45 days and therefore does not provide evidence that the absences were due to emergent reasons.

Accordingly, the applicant's admitted absence outside of the United States during 1982 interrupted her "continuous residence" in the United States. The applicant has, therefore, failed to establish that she resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. § 245a.11(b) and 15(c)(1). Given this, she is ineligible for permanent resident status under section 1104 of the LIFE Act.

The record reflects that on February 25, 1988, the applicant was convicted in the Municipal Court of Los Angeles, Van Nuys Judicial District, of theft in violation of California Penal Code section 484(a). She was placed on summary probation for 12 months and ordered to pay a $100 fine. (Docket number 88P01315). This single misdemeanor conviction alone does not make the applicant ineligible for adjustment of status under the LIFE Act.

The applicant filed a Form I-687 application pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.,* CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) on January 10, 2006, under CIS receipt number MSC 06 102 16057. The District Director, Los Angeles, California, denied the application on July 20, 2006. The appeal of that denial is not at issue in this decision.

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