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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHOENIX Date: NOV 03 2008
MSC 02 025 60444

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.

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 Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 reasserts the veracity of her claim to have entered the United States in May 1979.

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).

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.

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

- A letter dated February 3, 1981, written in the Spanish language from [redacted], principal of Our Lady of Lourdes Academy in Nogales, Arizona.
- An additional letter dated March 1, 1983 from [redacted], who indicated that the applicant "is registered en [sic] our school and attending the 11-commerical course."
- A Report of Pupil Progress from Our Lady of Lourdes Academy signed by [redacted] a teacher at Our Lady of Lourdes Academy for the school year 1981 to 1982. The report indicated that the applicant had been promoted to the second grade on May 28, 1982.
- An undated statement from of Phoenix, Arizona, who indicated that the applicant was in her employ as a housekeeper from 1986 to 1988.
- An undated statement from [redacted] of [redacted], Phoenix, Arizona, who indicated that the applicant resided with her and assisted with housekeeping duties from 1984 through 1985.
- A letter dated May 19, 1988, from [redacted], who indicated that he has known the applicant since 1986 and attested to the applicant's moral character.
- A letter dated May 9, 1988 from who indicated that he has known the applicant since 1987 and attested to the applicant's moral character.
- An outpatient discharge sheet dated June 28, 1986.
- A statement dated July 24, 1990, from an individual (name is indecipherable) at Memorial Medical Office Building in Phoenix, Arizona, who indicated that the applicant was seen twice in 1986 for tonsillitis.
- A undated statement from a sister, [redacted] of Nogales Sonora, Mexico, who indicated she accompanied the applicant on July 25, 1987 to Mexico to visit their mother who was in the hospital. The affiant asserted that the applicant returned to Phoenix on July 30, 1987.

At the time of her interview on December 2, 2002, the applicant indicated that she last entered the United States in July 1987 using a border crossing card. Service records reflect that a border crossing card was issued to the applicant in February 1987.

On June 27, 2003, the applicant was issued a Form I-72, which requested the applicant to submit additional evidence documenting her continuous residence in the United States during the requisite period along with a copy of her school transcripts for schools attended in the United States and the vaccination supplement to the Form I-693, Medical Examination. The applicant, in response, submitted copies of documents previously provided along with:

- A notarized affidavit from [redacted] of Nogales, Arizona, who indicated that she has known the applicant since January 1979. The affiant asserted that the applicant resided at [redacted] before 1979, attended school in Nogales, Arizona and graduated from high school.
- A notarized affidavit from [redacted] of Nogales, Arizona, who indicated that she has known the applicant since January 1979 and attested to the applicant's residence in Nogales from 1979 to 1986.

On February 2, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of her failure to submit certified copies of her school records, documentation to establish her continuous residence and the vaccination supplement to the Form I-693. The applicant was also advised that there were inconsistencies between the documents submitted by [redacted] and [redacted]. Specifically, the Report of Pupil Progress for 1981 to 1982 indicated that the applicant was being promoted to the second grade. However, in her

February 3, 1981 letter, [redacted] indicated that the applicant was a student in the eighth grade in 1981. The director determined that the documents from Our Lady of Lourdes Academy cannot be given significant weight as they provide contradicting information regarding the applicant's school attendance. The director indicated, in pertinent part:

> Although it is apparent from your evidence that you resided in the United States on or after 1986, it is not at all clear that you entered the United States prior to January 1, 1982, or that you resided continuously in the United States from then until much later in the qualifying period.

The applicant was granted 30 days in which to submit a rebuttal. The applicant, however, failed to respond to the notice and, accordingly, the director denied the application on June 27, 2007.

On appeal, the applicant asserts, in pertinent part:

> I was attending Our Lady of Lourdes Academy; I was living in Nogales, Arizona with Mr. and Mrs. [redacted]. I used to live in a little mobile home that they had park in their backyard. Mr. [redacted] had a tomotoes [sic] business in Nogales, Arizona. They lived during the winter time in Patagonia and during summer they will go to their other residence in St. Louis, Missouri. I used to take care of the house maintenance while they were out of town and while they were in town, I will clean their home and accompanied them. This was a verbal agreement. I would take care of their home while they were out of town and I will be living in that mobile home while I was attending school. Mr. and Mrs. [redacted] are deceased. I saw their grandchildren one or two times during the time that I was living at their home.
>
> I left Nogales Arizona around 1989 when I came to live here in Phoenix, and I lost contact with most of the people there. I came to live here with my boyfriend, then I had my child and it was hard for me to go back to visit.
>
> During the time I was there I was by myself so I was scared to go outside the house, I will just go to school since it was in a walking distance. I never walked they will give a ride to school bit it was close to the school.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--, supra.* In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--, supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as she has presented contradictory and inconsistent documents, which undermines her credibility.

Mr. [redacted] and Mr. [redacted] claimed to have known the applicant since 1986 and 1987, respectively, but failed to provide the applicant's place of residence, provide details regarding the nature of their relationship

with the applicant or the basis for their continuing awareness of the applicant's residence. 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 her claim.

The applicant submits several photocopied documents she claims will establish her attendance at Our Lady of Lourdes Academy. The documentation, however, have no evidentiary weight as the school achievement record does not list the name of the applicant or the academy. The remaining documents do not list the date the applicant attended the academy, the name of the academy, the applicant's address in the United States or are illegible. Assuming, arguendo, that these documents are genuine, it is not clear why the applicant did not obtain legible documentation from officials at Our Lady of Lourdes Academy certifying her attendance as the school is still open and is in good standing.[1]

[redacted] of Phoenix, Arizona indicated that the applicant was in her employ from 1986 to 1988, and [redacted] of Phoenix, Arizona indicated that the applicant resided with her from 1984 through 1985. However, the applicant, on appeal, stated that she did not reside in Phoenix until 1989 and made no mention of being employed 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).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). 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.

[1] http://www.diocesetucson.org/schools2K6directory.html accessed on October 17, 2008.