U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

L2

[redacted]

FILE: [redacted] Office: HOUSTON Date: NOV 28 2008

MSC 03 247 61240

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On December 4, 2006, the Director, Houston, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant did not establish, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided continuously in the United States prior to January 1, 1982, and through May 4, 1988. The director noted that the birth of two of the applicant's children in Mexico in 1981 and 1982 raised questions about her continuous residence in the United States during that time period. The director found that letters from doctors in Mexico failed to satisfy these doubts.

On appeal, counsel for the applicant asserts that the applicant stated under oath that she first entered the United States in 1981. Counsel asserts that documents submitted on appeal explain previous inconsistencies and support her claim of eligibility.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 states 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 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). See 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight that fill-in-the-blank affidavits providing generic information.

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

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in CSS v. Meese [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)."

On June 4, 2003, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On June 15, 2005, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden of establishing by a preponderance of the evidence, that her claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

Although the applicant submits some credible evidence of residence beginning in 1986, including the birth certificates of two children born in the United States in 1986 and 1987, there is minimal evidence of residence before 1985. The record of proceeding contains the following evidence relating to the applicant's residence in the United States before 1985:

- Two letters from the applicant's childhood friend, [redacted]. In a letter notarized on March 7, 1994, [redacted] states that he has known the applicant since 1965 and that he has been acquainted her in Houston, Texas, since

early 1980. He states that at the time, she lived at [redacted] in Houston. In an updated letter notarized on June 29, 2006, [redacted] states that although he stated in his previous letter that he has known the applicant since 1980, he knew her from before because they were childhood friends in Mexico. [redacted] fails to indicate any specific, personal knowledge of the applicant's travel to or entry into the United States. In addition, he provides minimal details about the circumstances regarding her continuous residence during the statutory period. Because these letters are significantly lacking in relevant detail, they lack probative value and can be given only minimal weight as evidence as evidence of the applicant's residence in the United States during the requisite period.

In addition, on the Form G-325A, Biographic Information, and Form I-687, Application to Register as Temporary Resident, the applicant states that she did not come to the United States until May 1981. 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 has made no attempt to explain or reconcile the inconsistent statements regarding her initial date of entry and has not submitted evidence pointing to where the truth lies. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. She has failed to do so;

- A letter dated December 9, 1993, from [redacted] Although Mr. [redacted] states that he has known the applicant since 1981, he does not indicate exactly when, where, or under what circumstances he met the applicant. He appears to have no personal knowledge of the applicant's entry into the United States and minimal details of the circumstances of her residence in the United States;

  also states that the applicant packaged cactus for Fecha Mexican Produce "off and on since September '84 to present. By regulation, if writing as the applicant's employer, [redacted] is required to 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. As employment verification, this letter does not meet these regulatory standards. Specifically, it does not provide the applicant's address at the time of employment. Also, Mr. [redacted] does not offer to either produce official company records or to testify regarding unavailable records. This letter can therefore be accorded only minimal weight as evidence of the applicant's continuous residence during the requisite period;

A letter dated October 2, 1991, signed by [redacted] general manager of the Petroleum Club of Houston. Mr. [redacted] states that the applicant worked as a housekeeper and warewasher from September 19, 1983 to October 11, 1983, and was rehired on November 21, 1984, to January 2,1 985. Mr. [redacted] state that this information came from official Club records. This letter can be given little evidentiary weight because it lacks sufficient detail and information required by the regulations. Specifically, the employer failed to provide the applicant's address at the time of her employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employer also failed to identify the location of the records the information was taken from and to state whether such records are accessible, or, in the alternative, state the reason why such records are unavailable. In addition, the letter listed her positions, but did not list the applicant's duties with the company; and,

Two doctor's letters from Mexico. In a letter dated November 19, 2005, Dr. [redacted] states that the applicant gave birth prematurely, in her 32nd week, to her son, [redacted], on February 14, 1982. In a letter dated July 12, 2005, [redacted] states that the applicant's other son, [redacted] was circumcised in 1982 and that there were no complications. These letters do not corroborate the applicant's assertion that she only traveled to Mexico to deliver her children and that she was in Mexico in 1982 because of medical problems her son [redacted] was having. Again, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*. The applicant has not reconciled the inconsistent statements regarding her initial date of entry and her travel back and forth to Mexico on the dates her children were born there and has not submitted evidence pointing to where the truth lies.

As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. In this case, her assertions regarding her entry prior to January 1, 1982, and residence through 1986, are supported only by three letters, all of which have minimal probative value for the reasons described above. When viewed within the context of the totality of the evidence, such documentation is not sufficient to support a finding that it is more likely than not that the applicant resided continuously in the United States from before January 1, 1982, through May 4, 1988; nor does such documentation place the applicant in the United States prior to January 1, 1982. Even if the doctor's letters the applicant submitted explained that she was only briefly in Mexico in 1981 and 1982 to deliver her children, the remaining evidence in the record is insufficient to meet her burden of proof that she continuously resided in the United States during the statutory period.

The record of proceedings contains other documents, including the birth certificate of a child born in the United States in 1996 and tax records from 2002 to 2004. All of this evidence is

dated after the requisite statutory period and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have first entered the United States without inspection in May 1981, and to have resided for the duration of the requisite period in Houston, Texas. As noted above, to meet his or her burden of proof, the applicant must provide evidence of eligibility apart from his or her own testimony. The applicant has failed to do so. In this case, her assertions regarding her entry are not supported by any credible evidence in the record.

The absence of credible and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period detracts from the credibility of her 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 on only affidavits, which lack relevant details, and the lack of any probative evidence of her entry and residence in the United States from prior to January 1, 1982 and through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that she maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.