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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEW YORK Date: OCT 01 2008

MSC 02 204 65050

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.

John D. Vaughan
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 director in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the documents submitted by the applicant in support of her claim are sufficient to establish the applicant's presence in the United States from January 1, 1982 through May 4, 1988. Counsel asserts that the director failed to give proper weight to the evidence submitted by the applicant.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: "An alien shall be regarded as having resided continuously in the United States if *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." (Emphases added.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. *See* 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 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.

The applicant, a native of Colombia who claims to have lived in the United States since March 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on April 22, 2002. As evidence of her residence in the United States during the years 1981-1988 the applicant submitted affidavits and other documents, some of which were originally filed in 1990. They included the following:

- A letter of employment from [redacted], a resident of Long Island City, New York, dated August 14, 1989, stating that the applicant was employed by him at Didi Cout & Suit [sic] as an "operator" from June 1981 until December 14, 1984, at an annual salary of $5,750.

- A letter of employment from [redacted], owner of [redacted] in Long Island City, New York, dated August 12, 1989, stating that the applicant was employed as an "operator" from February 10, 1985 until May 20, 1986, at an annual salary of $6,900.00.

- A letter of employment from [redacted] manager of [redacted] Inn in Roslyn, New York, dated August 12, 1989, stating that the applicant was employed as a housekeeper starting in June 1986 at an annual salary of $14,000.00.

- 1987 and 1988 Wage and Tax statements issued to the applicant by [redacted] Corporation in Roslyn, New York. The applicant's address on both forms is listed as [redacted]

- A U.S. Individual Income Tax Return for 1986 in the applicant's name, dated June 4, 1988. The applicant's address on the form is listed as [redacted] Sunnyside, New York.

- A State of New York, City of New York, City of Yonkers, resident income tax return for 1987 in the applicant's name, dated June 4, 1988. The applicant's address on the form is listed as [redacted]

- A letter from [redacted] of the Church of St. Sebastian in Woodside, New York, dated September 26, 1989, stating that the applicant swore to him that she had lived in the United States since April 1981, that she attended religious services at the church and that she resided at [redacted] Elmhurst, New York.

- Two affidavits from [redacted] resident of Hempstead, New York, both dated August 26, 1989, stating that she had known the applicant since 1981, and that the applicant rented a room at her house located at [redacted] Hempstead, New York, from April 1981 to August 1986.

- An affidavit from [redacted], a resident of Elmhurst, New York, dated August 28, 1989, stating that the applicant rented a room at her house located at [redacted], New York, from August 1986 to the present (August 1989).

- Affidavits from [redacted] residents of Glen Cove, New York, dated August 26, 1989, stating that they had known and been friends with the applicant since 1981.

- Various retail receipts with handwritten entries, some without the applicant's complete name and address, with dates in the 1980s.

  Three envelopes addressed to the applicant at [redacted] York, from individuals in Colombia. One envelope bears a visible postmark date of May 22, 1983. The postmark dates on the two other envelopes are illegible.

In a Notice of Intent to Deny (NOID), dated April 21, 2007, the director indicated that the affidavits submitted by the applicant appeared neither credible nor amenable to verification, that there was no evidence that the affiants had personal knowledge of what they attested and that they were present in the United States during the statutory period. The director concluded that the applicant failed to provide sufficient credible evidence to establish that he resided continuously in the United States from before January 1, 1982, through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response, counsel submitted the following additional documentation:

A second letter from [redacted] ated April 10, 2007, stating that she had been acquainted with the applicant from April 1981 to April 2007, and that she had maintained continuous contact with the applicant since April 1981.

- A letter from [redacted], the manager of Gold Coast Inn, (formerly [redacted] Motor Inn) in Roslyn, New York, dated April 30, 2007, confirming that the applicant was employed as a housekeeper from June 1986 until 1991.

On June 26, 2007, the director issued a Notice of Decision denying the application. The director found that the documentation submitted in response to the NOID and the other evidence in the record was insufficient to overcome the grounds for denial. The director concluded that the evidence failed to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, counsel asserts that the director failed to give proper weight to the evidence submitted by the applicant. In counsel's opinion, the evidence in the record is sufficient to establish that the applicant has continuously resided in the United States from before January 1, 1982 through May 4, 1988. **The applicant submitted copies of documents previously submitted in the record.**

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The U.S. Income tax return for 1986, dated June 4, 1988, and the State of New York, City of New York, City of Yonkers, resident income tax return for 1987, dated June 4, 1988, are not signed by the applicant. The address listed for the applicant on the forms [redacted] Sunnyside, New York), is contrary to any of the addresses claimed by the applicant as her residence in the United States during the 1980s as listed on the Form I-687 (application for status as a temporary resident) she filed on June 13, 1990. The forms are not supplemented by official receipt from the Internal Revenue Service (IRS) or the State of New York, to verify that the returns were actually filed. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In view of these substantive shortcomings, the tax return forms have little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The earnings statements for the years 1987 and 1988 from [redacted] in Roslyn, New York, were addressed to the applicant at [redacted] New York. The applicant did not list [redacted] as her residence in the 1980s or at any other time. Even if the AAO accepted the address as evidence of the applicant's residence in the United States during those years, they would not be sufficient to establish the applicant's continuous residence in the United States prior 1987, much less before January 1, 1982 as required for legalization under the LIFE Act.

The employment letters from [redacted] and [redacted] do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not provide the applicant's address at the time of employment, do not indicate whether the information was taken from company records, and do not indicate whether such records are available for review. Nor do the letters describe the applicant's duties in detail. The letters were not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed.

For the reasons discussed above, the AAO determines that the employment letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 through 1988.

The letter from [redacted] of the Church of St. Sebastian, dated September 26, 1989, which was based solely on what the applicant told him, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter did not indicate the period of the applicant's membership at the church or indicate where the applicant lived during the time she was a member of the church. The letter did not indicate how

[redacted] knows the applicant and when he met her. Since the letters listed above do not comply with sub-parts (C), (D), and (F) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value. The letters are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits from [redacted] dated August 26, 1989, and from [redacted], dated August 28, 1989, who claim to have rented rooms to the applicant during the 1980s, provide some basic information about the applicant, such as the address she claims in the United States during the 1980s, but few details about the applicant's life in the United States and her interaction with the affiants during the periods they supposedly lived together. Nor were the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s.

[redacted] claims that she rented [redacted], to the applicant from April 1981 to August 1986, and [redacted] claims to have rented [redacted], to the applicant from August 1986 to August 1989. But on the Form I-687 she filed in June 1990, the applicant listed the following addresses in the United States in the 1980s: [redacted] York, from April 1981 to March 1983; [redacted], from April 1983 to October 1989; and [redacted], New Jersey, from November 1989 to the present (1990). The applicant did not list [redacted] New York, as one of her addresses in the 1980s. The inconsistencies noted above cast doubt on the applicant's claim that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *Matter of Ho, id.* In view of this conflicting information regarding both dates and addresses, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits from [redacted] dated August 26, 1989, and from [redacted] dated August 26, 1989 and April 30, 2007, stating that they had known and been friends with the applicant since 1981, have minimalist or fill-in-the-blank formats with little input by the affiants. The information in the affidavits is not very personal and could just as easily have been provided by the applicant. The affiants provide no details about the applicant's life in the United States or her interaction with the affiants over the years they claimed to have known her. Nor were the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The various retail receipts, bearing dates from 1981 to 1987, are all handwritten with no stamps or other official markings to authenticate the dates they were written. Some of the receipts do not identify the applicant's complete name and address. Only one receipt dates from before January 1, 1982. Given these substantive deficiencies, the receipts are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Of the three pertinent letter envelopes addressed to the applicant at [redacted] New York, only one has a clear postmark date of May 22, 1983. The postmark date on the remaining two envelopes are illegible and it cannot be determined when those envelopes where mailed. The postmark date of May 22, 1983, on one of the envelopes is fraudulent because the stamp of 45p appears to be part of a series featuring the Condor issued by the government of Colombia in 1988 and 1989. Scott 2006 Standard Postage Stamp Catalogue, Vol. 2, p. 404. In addition, one of the illegible postmark envelopes has a stamp of the French Revolution Bicentennial, which was not issued by the government of Colombia until June 29, 1989. Scott 2006 Standard Postage Stamp Catalogue, Vol. 2, p. 428. The address on the envelope with the postmark date of May 22, 1983, is contrary to the affidavits of residence submitted by [redacted]. According to the affidavits, the applicant did not reside at [redacted] until 1986. In light of the inconsistencies and deficiencies noted above, the envelopes are not credible evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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