U.S. Department of Homeland Security
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Washington, D.C. 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: GARDEN CITY Date: OCT 30 2008

MSC 02 032 63467

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.

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, Garden City, New York, 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, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel submits additional affidavits in support of the appeal.

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 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 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 notarized affidavit from a cousin, [redacted] of Brooklyn, New York, who attested to the applicant's residence at [redacted] Far Rockaway, New York from 1981 to 1990.
- A notarized affidavit from [redacted] of [redacted], Far Rockaway, New York who indicated that the applicant resided with her from July 1, 1981 to August 1990. The affiant asserted that the rent receipts and household bills were in her name.
- Notarized affidavits from [redacted] and [redacted] of Brooklyn, New York, attested to the applicant's residence at [redacted], Far Rockaway, New York from July 1981 to August 1990 and from June 1986 to May 1990, respectively. The affiants based their knowledge of the applicant's residence through "church association."
- A notarized affidavit from [redacted] of Corona, New York, who attested to the applicant's residence at [redacted] from July 1981 to September 1990. The affiant asserted that she introduced the applicant to Christian International Association for worship and she has always been a good friend of the applicant.
- A letter dated July 5, 1990 from [redacted] of Speedite Couriers in New York, New York, who attested to the applicant's employment as a messenger.
- A letter dated April 30, 1990, from [redacted] supervisor of Hotel Inter-Continental, New York, who attested to the applicant's employment as a housekeeper from September 1985 to October 1986.
- A letter dated October 22, 1990, from [redacted], executive coordinator of International Christian Association, Inc., in New York City, who indicated that the applicant attended its national meeting "from December 21 to 23 1981. Since that time, she has become a very active member...."
- An undated letter from [redacted] a doctor, in Jamaica, New York, who indicated that the applicant was treated for stress in October 1981, February 1983, April 1985, and June 1986.
- An affidavit from a cousin, [redacted], of Ontario, Canada, who attested to the applicant's visit from August 10, 1987 to August 29, 1987.

On May 7, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the letter from [redacted] was not verifiable as the telephone number appeared to be an incorrect number. Citizenship and Immigration Services attempted to contact [redacted], but none of the telephone numbers listed on the letter appeared to be associated with the affiant. The applicant was also advised that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The director determined that the applicant failed to submit credible documents that could be independently verified.

The applicant, in response, asserted that she had submitted sufficient evidence to establish her continuous residence during the requisite period, specifically the letter from [redacted]. The applicant submitted

additional affidavits from [redacted] and who reaffirmed the contents of their initial affidavits.

The director, in denying the application, considered the applicant's response and determined that the letter from [redacted] was not credible or verifiable. Regarding the affidavits from [redacted], the director determined that the applicant failed to submit evidence of her joint residence with the affiant. Further, [redacted] the affiant, in his initial affidavit, failed to mention the name of the church he and the applicant were affiliated with and in his second affidavit, the affiant listed the addresses where the applicant purportedly resided in the United States, but provided no dates.

Regarding the letter from [redacted] counsel, on appeal, asserts that it has been 27 years from the date the doctor provided his services and the director must take into account the length of time that has passed in order to prove a case before 1982. Regarding the applicant's failure to submit evidence of her joint residence with [redacted] counsel asserts, "there are no bills available and no actual documentation available to support the payment of bills." Counsel submits an additional affidavit from [redacted], who attests to the applicant's residence at from July 1981 to August 1990, and indicates, in pertinent part:

> That the applicant and I were affiliated and associated with the same church Celestial Church of Christ located at [redacted] Brooklyn, New York 11237 initially in August 1981. During this time, we were meeting and attending weekly Sunday Services. Later, I found out she is a daughter of my colleague working in United Bank for Africa in Nigeria while I was working for New York branch of the same bank.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence and the applicant's inability to produce additional evidence due to the passage of time have been considered. The AAO, however, does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as she has presented contradictory and inconsistent documents, which undermines her credibility. Specifically:

The employment affidavit from [redacted] has no probative value as it failed to include the exact dates of employment and the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to 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.

[redacted], in his employment letter failed to include the applicant's address at the time of employment, failed to 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 required under 8 C.F.R. § 245a.2(d)(3)(i).

The letter from [redacted] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the reverend does not explain the origin of the information to which he attests. It must be noted that the letter from the affiant also raises questions to its authenticity as the applicant did not indicate on her Form I-687 application that she was affiliated with any religious organization during the requisite period.

Likewise, the affidavits from [redacted] and [redacted] have little evidentiary weight or probative value as the applicant did not claim on her Form I-687 application any affiliation with a religious organization 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.