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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: NEW YORK Date: OCT 30 2008

MSC 02 211 63505

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On July 26, 2006, the Director, New York, 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 an affidavit from [redacted] appeared to have been altered. The director also noted that the applicant's testimony regarding a trip to Colombia in 1987 is internally inconsistent and that the trip lasted longer than 45 days and breaks her required continuous physical presence.

On appeal, counsel for the applicant asserts that the documentation the applicant submitted is all she has and wants to know what more the Service wants. Counsel asserts that the documents the applicant submitted is sufficient to meet her burden of proof.

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.

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.

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)," filed on September 10, 1991.

On April 29, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On April 6, 2004, the applicant appeared for an interview based on the application.

Regarding the requisite period, the applicant has provided the following documents:

- Three employment verification letters. In a letter dated October 18, 1991, [redacted] states that the applicant worked for her since May 1988 as a babysitter for her two children and that she paid her $125 per week. In a handwritten letter dated August 16, 1991, asserts that the applicant was her babysitter from July 1985 to December 1987. She states that the applicant took care of her children ages eight and newborn. She states that the applicant is a

very nice person and reliable worker. In a letter dated August 17, 1991, [redacted] states that the applicant worked for her as a housekeeper from October 1981, through June 1985. She asserts that the applicant earned $125 per week. She states that she was happy with the applicant and would have liked to have kept her under employment as long as she would have wanted to work.

By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant's address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer's willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). Neither letter meets these regulatory standards. They are not on letterhead and do not provide the applicant's address at the time of employment; the affiants do not offer to either produce official company records or to testify regarding unavailable records. Therefore, these letters can be accorded only minimal weight as evidence of residence during the requisite period;

- A fill-in-the-blank affidavit from [redacted] indicating that the applicant left the United States from December 23, 1987, to February 5, 1988, "due to her mother's illness." This affidavit, while possibly confirming the applicant's absence in 1987, has limited relevance as evidence of his residence in the United States during the requisite period; and,

- A handwritten letter dated March 16, 2006, from Dr. [redacted] simply states that the applicant was examined and evaluated on March 1, 1988. This letter can be given minimal weight as evidence of the applicant's continuous residence during the statutory period because it lacks any indication of what records were consulted. In addition, [redacted] fails to provide basic details, including why the applicant came to him, what his diagnosis was after he examined her, or what, if any, treatment he recommended. Furthermore, the letter is not supported by copies of contemporaneous records. Given this lack of detail, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period.

As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. 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.

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 December 28, 1980, and to have resided for the duration of the requisite period in California and New York. 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.