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

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[redacted]

FILE: [redacted] Office: MIAMI Date: SEP 2 2 2008

MSC 02 186 60059

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.

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, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant states that the applicant timely responded to the NOID, and asserts that the applicant has submitted sufficient evidence to establish the requisite continuous residence.

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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.

In the Notice of Intent to Deny (NOID), dated January 11, 2007, the director stated that the applicant failed to submit evidence demonstrating her continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted questionable documentation. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated February 17, 2007, the director denied the application based on the reasons stated in the NOID. The director noted that the applicant failed to respond to a notice of intent to deny. Counsel, however, has provided evidence that the applicant timely submitted a response to the NOID. Counsel resubmits documents which were provided in response to the NOID, as additional evidence, on appeal.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.[1]

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. The applicant submitted letters and affidavits as evidence to support her Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Affidavits and letters

The applicant provided the following:

1. A notarized letter from [redacted] dated April 1, 2004, stating that she has known the applicant to have resided in the United States since 1984. [redacted] also states that she and the applicant maintain a friendship, but does not indicate how they maintain their friendship, when in 1984 they became acquainted, or whether the applicant has resided continuously in the United States since 1984.

2. A notarized letter from dated March 27, 2004, stating that she has known the applicant to have resided in the United States since 1984. also states that the applicant helped her sister [redacted] in the house and did some babysitting for friends and family. [redacted] however, does not indicate when in 1984 they became acquainted, or whether the applicant has resided continuously in the United States since 1984.

3. A notarized letter from [redacted] dated April 2, 2004, stating that he has known the applicant since 1987 while she lived with her sister [redacted], however, does not indicate when in 1987 their acquaintance began or whether the applicant has resided continuously in the United States since 1987.

4. A notarized letter from [redacted] ated March 30, 2004, stating that she has known the applicant to have resided in the United States since 1982. also states that the applicant worked for her from February 1982 through 1984 cleaning her house and babysitting her younger son. [redacted] however, does not indicate when in 1982 she became acquainted with the applicant, how she dated her acquaintance with the applicant, or whether the applicant has resided continuously in the United States since 1982.

5. A notarized letter from dated April 5, 2004, stating that she has known the applicant to have resided in the United States since 1982. [redacted] also states that the applicant did babysitting and house cleaning. [redacted] however, does not indicate when in 1982 she became acquainted with the applicant, how she dated her acquaintance with the applicant, whether and how she maintained contact with the applicant, or whether the applicant has resided continuously in the United States since 1982.

6. A notarized letter from [redacted] dated July 2, 2001, stating that the applicant, who is his sister-in-law, came to the United States in April 1981, and she was a friend and a guest at his home. [redacted] states that the applicant has continued to provide for herself as a housekeeper in the hotel industry. However, the affiant does not indicate whether the applicant has resided continuously in the United States since 1981.

It is noted that the applicant submitted additional letters which do not pertain to the requisite period. As such these letters are not probative of the applicant's continuous residence.

The affidavits submitted lack detail, and do not, individually or cumulatively, establish the requisite continuous residence. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, it is noted that the affiants did not include any supporting documentation of the affiant's presence in the United States during the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

The applicant has, therefore, failed to establish that she resided in a continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.