U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: SALT LAKE CITY Date: APR 01 2009

MSC 02 247 67708

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 F. Grissom, Acting 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 Salt Lake City, Utah. 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 applicant has submitted sufficient evidence to establish that she meets the continuous residence requirement for legalization under the LIFE Act.

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 Mexico who claims to have lived in the United States since November 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on June 5, 2002.

In a Notice of Intent to Deny (NOID), dated September 28, 2005, the director indicated that the applicant had not submitted sufficient credible evidence to establish that she entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. The director cited inconsistencies between the applicant's testimony at her LIFE interview on June 9, 2004, in which the applicant claims that she first entered the United States on May 6, 1984, and other documentation in the record that states otherwise. The director also noted that the applicant had a child in Mexico on April 17, 1984. The applicant was granted 30 days to submit additional evidence.

The applicant timely responded and submitted additional affidavits in support of her application. On November 19, 2007, the director issued a decision denying the application stating that the response submitted by the applicant was insufficient to overcome the grounds for denial. The director noted that the applicant did not address the birth of her son in Mexico in April 1984.

On appeal counsel asserts that the applicant has submitted sufficient evidence to establish that she meets the continuous residence requirement for legalization under the LIFE Act. Counsel submits no additional documentation with the appeal.

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 she has not.

The documentation submitted by the applicant in support of her claim that she entered the United States before January 1, 1982 and resided continuously in an unlawful status through May 4, 1988, consists primarily of a series of letters and affidavits dated in 1991, 2002, and 2004, from individuals who claim to have employed, resided with or otherwise known the applicant during the 1980's. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The submitted documentation is not probative or credible.

The AAO finds that the copy of the applicant's daughter's birth certificate indicating that the applicant gave birth to her daughter in San Diego, California, on September 3, 1985, and the copy of Immunization Record for her daughter is credible evidence that the applicant was in the United States sometime in 1985 and resided continuously in the country thereafter. The applicant however, has not submitted credible primary evidence of her continuous residence in the United States from before January 1, 1982 through 1985. Thus, the AAO will focus its review on the evidence submitted by the applicant during the prior years – which consists mostly of letters and affidavits.

The applicant's claims that she entered the United States in November 1981, and resided continuously in the country thereafter, with one trip to Mexico from March 25 to May 4, 1984 is questionable in light of some documentation in the record that casts doubt on the veracity of her claim. The applicant acknowledged on the Form I-687 (application for status as a temporary resident) she filed in June 1991, as well as on the Form I-485 she filed in 2002, that she gave birth to her son in Mexico on April 17, 1984. The letters and affidavits submitted on behalf of the applicant did not mention the applicant's trip to Mexico and the birth of the applicant's child in Mexico. The affiants, most of whom claimed that the applicant resided with them and babysat their children did not account for the applicant's trip to Mexico to have a child. Also, the addresses provided by the affiants as the applicant's residences in the United States during the 1980s, is contrary to information provided by the applicant herself about her residential addresses during the same period. The conflicting information by the affiants and the lack of any objective evidence

from the applicant to establish when she entered the United States, undermines the credibility and reliability of the affidavits as credible evidence of the applicant's residence in the United States from before January 1, 1982 through 1985.

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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.* The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant as evidence of her continuous residence in the United States from before January 1, 1982 through 1985, is suspect and it must be concluded that the applicant has failed to establish that she continuously resided in the United States in an unlawful status during the requisite period 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 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, 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.