U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: GARDEN CITY Date: APR 15 2009

MSC 02 060 60922

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).

IN 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, 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, the applicant asserts that she submitted a timely response to the Notice of Intent to Deny and provides copies of the documents previously submitted.

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. Section 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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 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.

The record contains a copy of the applicant's passport, which reflects that the applicant was issued a visa in Paris, France on May 13, 1983, and the applicant entered the United Kingdom on June 4, 1983.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- Affidavits from of Elizabeth, New Jersey, who indicated that the applicant had been employed as a housekeeper from February 7, 1981 to June 1990.
- Affidavits from [redacted] and [redacted] attesting to the applicant's absence from the United States from June 8, 1987 to July 7, 1987. [redacted] asserted that he took the applicant to the airport and asserted she gave the applicant money to buy a dress in France.
- An affidavit from who indicated that he has known the applicant since 1985.
- Additional affidavits from [redacted], who attested to the applicant's residence from February 1981 to June 1990 at [redacted], Elizabeth, New Jersey. The affiant asserted that he has known the applicant as a close friend since 1981.
- Affidavits from [redacted] and [redacted] who indicated that they have known the applicant since 1981. [redacted] indicated that (s)he and the applicant attend the same church together.
- An affidavit from [redacted] who indicated that she met the applicant at a Christmas part and attested to the applicant's '[redacted]' residence from December 1981 to June 1990.
- A letter dated March 29, 2003, from [redacted] interim pastor of Church of the Advent Hope in New York City, who indicated that the applicant has been a member of the church for the past few years.
- A letter dated March 26, 2003, from [redacted] pastor of Jackson Heights Seventh-Day Adventist Church in Woodside, New York, who indicated that the applicant "goes to the Jackson Heights Church Center, since 1983 to help us with the Youth programs."

The applicant also submitted additional documents; however, they have no probative value or evidentiary weight as they serve to attest to the applicant's residence subsequent to the period in question.

On December 19, 2007, the director issued a Notice of Intent to Deny, which advised the applicant 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 applicant was also advised that the Service records reveal that [redacted] and [redacted] did not enter the United States until September 28, 1989, March 16, 1989 and March 11, 1987, respectively. The applicant was also advised that no evidence of her 1987 departure and return to the United States was provided. In addition, the applicant was also advised of her passport which reflected she was in Paris, France on May 13, 1983, and that this absence was not listed on her Form I-687 application.

The director, in denying the application, noted that the applicant failed to respond to the Notice of Intent to Deny. The applicant, on appeal, asserts that she submitted a response to the Notice of Intent to Deny. However, a thorough review of the record does not support this finding. On appeal, the applicant's submits:

A copy of the letter from [redacted] of Jackson Heights Seventh-Day Adventist Church.
Two photographs the applicant claimed were taken in May 1985.

- A letter dated February 21, 2008 from the Consul General of Madagascar in New York, who attested to the applicant's residences in New Jersey and New York since 1981.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--, supra.* In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--, supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and continuously resided since that date through May 4, 1988, as she has presented contradictory and inconsistent documents, which undermines her credibility.

[redacted] and [redacted] indicated that they have known the applicant since 1981, but failed to state the applicant's place of residence during the requisite period, provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim.

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 pastor does not explain the origin of the information to which he attests.

The affidavits from [redacted] contradict each other. In his first affidavit notarized on February 18, 1990, the affiant attested to knowing the applicant since 1985; however, in his subsequent affidavits, the affiant indicated that he has known the applicant since 1981. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from the affiant has been submitted to resolve his contradicting affidavits.

The applicant has not addressed the director's finding regarding her passport which indicates that a visa was issued to her in Paris, France on May 13, 1983, and that she entered the United Kingdom on June 4, 1983. The applicant's failure to disclose this absence from the United States on her Form I-687 application is a strong indication that the applicant was not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation. This further undermines the credibility of the applicant's claim to have continuously resided in the United States since before January 1, 1982, through May 4, 1988.

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.