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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES Date: FEB 03 2009

MSC 02 243 65772

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 office that originally decided your case. If your appeal was sustained, or if your case 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On September 22, 2005, the Director, Los Angeles, 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 failed to prove by a preponderance of the evidence that she entered the United States before January 1, 1982, and that she continuously resided in the United States thereafter through May 4, 1988. The director noted that the documents the applicant submitted established that the applicant first entered the United States in October 1987 and that the applicant reiterated this fact under oath during her adjustment of status interview. The director asserted that the applicant wrote a sworn statement to that effect.

Counsel for the applicant asserts that the applicant was not given a fair interview. Counsel asserts that during her interview, the applicant was only asked two questions and was required to sign a small card and give a fingerprint. Counsel asserts that the applicant was not asked when she entered the United States, where she lived, what she did for a living, and that she was not told to sign a sworn statement.

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 will consider all pertinent evidence in the record, including new evidence properly submitted on appeal.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence 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 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 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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. 245a.12(f). Affidavits that indicate specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits that provide 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.

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)."

On May 31, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On December 3, 2004, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden and establish 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.

The applicant submits some credible documentation regarding her residence in the United States from 1985 forward, including a 1985 Internal Revenue Service (IRS) Form W-2 with accompanying IRS Form 1040, 1986, two 1987 pay stubs from Bushnell Ribbon Corporation, and one 1988 pay stub from International Medical Systems. The documents she submitted to establish that she entered the United States before January 1, 1982, and continuously resided in

the United States until 1985, consists of an affidavit from the applicant's sister, [redacted] letters from two former employers, [redacted] and [redacted], and several fill-in-the-blank affidavits from friends and family members.

The affidavit from the applicant's sister, [redacted] can be given minimal weight as evidence of the applicant's entry to the United States before January 1, 1982, and her required continuous residence. [redacted] asserts that the applicant told her that she wanted to come to the United States because there were no job opportunities in Mexico but she provides no further details about when or how this was communicated to her by the applicant. Although [redacted] asserts that the applicant lived with her beginning on May 10, 1980, she provides no details that would indicate any personal knowledge of the applicant's entry into the United States in 1980. While [redacted] asserts that the applicant lived with her from May 10, 1980, to August 10, 1984, she provides few details of the circumstances of the applicant's residence in the United States during those four years other than the fact that she provided room and board for her during that time. In addition, [redacted] fails to submit corroborating evidence of her own residence in her home during this period, such as a lease or property title, and fails to submit evidence to corroborate that she herself was physically present and residing in the United States during this period.

The fill-in-the-blank affidavits from [redacted], and [redacted] can be given minimal weight as evidence of the applicant's entry to the United States before January 1, 1982, and her continuous residence thereafter through the end of the statutory period, as they contain minimal details regarding any relationship with the applicant during the requisite period. Although the affiants assert that they have personal knowledge that the applicant resided in the United States from May 1980 to December 1989, they fail to indicate any personal knowledge of the applicant's claimed entry to the United States in 1980. While they assert that they have seen the applicant regularly since 1980, the affiants also fail to provide sufficient relevant details regarding the circumstances of the applicant's residence during the statutory period. Lacking such relevant detail, the statements can be afforded only minimal weight as evidence of the applicant's continuous residence in the United States for the requisite period.

The fill-in-the-blank statement from can be given minimal weight as evidence of the applicant's entry into the United States prior to January 1, 1982, and of her continuous residence from prior to that date through May 4, 1988. [redacted] claims that he rented a room to the applicant from August 11, 1984, to December 31, 1988. As the applicant's landlord, [redacted] fails to submit corroborating evidence of the applicant's residence in the dwelling, such as a lease or rent receipts and fails to submit evidence to corroborate that he himself was physically present during the statutory period or that he owned the house where he rented a room to the applicant for four years.

The employment verification letters from [redacted] and [redacted], can be given minimal evidentiary weight as they fail to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i). Specifically the employers do not provide the applicant's address at

the time of employment, or show periods of layoff. Furthermore, the letter from [redacted] fails to declare whether the information provided was taken from company records, or 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.

Although the applicant has submitted several letters and affidavits to demonstrate entry into the United States and continuous residence during the required statutory period, she has not provided any contemporaneous evidence of residence in the United States during this time. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The record of proceedings contains other documents, including several residential leases, several employment verification letters, copies of Internal Revenue Service (IRS) tax returns and attachments, and various school records relating to her children, and [redacted] This evidence is dated after or refers to events that occurred after May 4, 1988, and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

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 May 1980, and to have resided for the duration of the requisite period in California. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from 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.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence she entered into the United States before January 1, 1982, and that she resided continuously in an unlawful status for 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. Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--, supra.*

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, she 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.