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MAIL STOP 2090

U.S. Citizenship and Immigration Services

[redacted]

L2

FILE: [redacted] Office: NEW YORK CITY Date: JAN 05 2009

MSC 02 144 61439

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 H. Vaughan

for 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 New York City. 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 director did not give proper weight to the evidence submitted by the applicant, which establishes the applicant's eligibility for LIFE legalization.

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 Colombia who claims to have lived in the United States since January 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on February 21, 2002.

On June 16, 2007, the director issued a Notice of Intent to Deny (NOID) in which the applicant was advised that she had not provided sufficient credible evidence to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant submitted a timely response to the NOID and submitted additional documentation as evidence of her residence in the United States. On September 18, 2007, the director issued a Notice of Decision denying the application on the ground that the response to the NOID was insufficient to overcome the grounds for denial.

On appeal counsel asserts that the director did not give proper weight to the evidence submitted by the applicant. In counsel's view, the evidence in the record is sufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. Counsel did not submit any 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 arrived in the United States before January 1, 1982 and resided continuously in an unlawful status during the requisite period for LIFE legalization consists of the following:

A copy of a birth certificate of the applicant's daughter, [redacted], showing that the applicant gave birth to her daughter in Queens, New York on June 24, 1987.

- Photocopies of Forms 1040A, U.S. Individual Tax Returns, and Forms IT-200, Resident Income Tax Returns for New York State, City of New York and City of Yonkers, in the names of [redacted], for the tax years 1986, 1987, and 1988, bearing no signature of the taxpayer or dates (of preparation).
- Five photographs of the applicant, her husband and others, two of which include recognizable New York City landmarks. Two of the photographs bear a "stamped" notation "Master Craftsmen May 1986" on the back. The remaining four photographs bear no dates or other notations on the back.
- Nineteen notarized letters and affidavits from the applicant's husband, sister and friends, dated in 1990, 1991 and 2007, attesting to the applicant's residence in the United States from before January 1, 1982 through May 4, 1988.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

The applicant's claims that she entered the United States in January 1981, resided continuously in the country in an unlawful status through May 4, 1988, and had just one brief trip outside the country to Colombia, in August and September 1987, are contradicted by records from United States Citizenship and Immigration Services (USCIS). According to USCIS records, the applicant entered the United States through New York City on December 1, 1985, and was lawfully admitted with a B-1 visa. There is no record of her departure following this entry. This information casts doubt on the applicant's claim that she entered the United States in January 1981 and resided continuously in the country in an unlawful status through May 4, 1988.

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. *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.*

Of the five photographs in the record, two bear the notation "Master Craftsmen May 1986" on the back, indicating that the photographs may have been processed in May 1986. The other three do not bear a date stamp or any other indication as to when they were taken. Two of the photographs have recognizable New York landmarks in the background. One of the photographs includes an infant whom the applicant identified as her first child, who was born in New York on June 24, 1987, as shown by the photocopied birth certificate in the record.

Based on the evidence of record – including the USCIS record that the applicant first entered the United States on December 1, 1985, the photographs discussed above, and the birth certificate of the applicant's first child, dated June 24, 1987 – the AAO is persuaded, by a preponderance of the evidence, that the applicant was continuously resident in the United States from December 1, 1985, through May 4, 1988, and beyond. To be eligible for legalization under the LIFE Act, however, the applicant must show that her continuous residence in the United States (in an unlawful status) began before January 1, 1982.

The only evidence of the applicant's residence in the United States before December 1, 1985 are notarized letters and affidavits in the record – dated in 1990, 1991 and 2007 – from the applicant's husband, sister, and acquaintances who claim to have employed, resided with, or otherwise known her during the 1980s. All of these documents have minimalist formats with little personal input by the authors. Considering the length of time they claim to have known the applicant – in many cases since 1981 or earlier – the authors provide remarkably few details about the applicant's life in the United States and their interaction with her over the years. Except for the family photos of the applicant and her husband and child, apparently taken in 1986-1987, the letters and affidavits are not accompanied by any documentary evidence of the authors' personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the letters and affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 up to December 1, 1985.

Based on the foregoing analysis of the evidence, and the applicant's lack of candor about her entry into the United States with a B-2 visa in December 1985, 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.