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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: EL PASO

Date:

JUN 02 2009

MSC 03 245 62474

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 El Paso, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. 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 properly evaluate the evidence submitted by the applicant in support of her application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement 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 the Mexico who claims to have lived in the United States since September 1980, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on June 2, 2003.

In a Notice of Intent to Deny (NOID), dated January 31, 2007, 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 the period required for legalization under the LIFE Act. The director noted that the applicant was issued a border crossing card by the United States Citizenship and Immigration Services (USCIS) in January 1988, which suggests that the applicant did not reside in the United States prior to January 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID counsel submitted a letter with some explanations for the evidentiary deficiencies cited in the NOID. Counsel submitted no additional documentation. On March 7, 2008, the director issued a decision denying the application on the ground that the information submitted in response to the NOID is insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the director did not properly evaluate the evidence submitted by the applicant in support of her application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement for LIFE legalization.

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 the country in an unlawful status through the requisite period for LIFE legalization, consists of the following:

- A letter of employment from [REDACTED], owner of K-Tee Company, Inc. in Los Angeles, California, dated January 18, 2002, stating that the applicant was employed from November 1986 through December 1990, sewing bathing suits, and that employee records were "discharged" prior to 1990.
- A fill-in-the-blank affidavit by [REDACTED] dated November 6, 2001, stating that she had known the applicant resided at three different addresses in California, from February 1981 to the present, that she and the applicant visited each other frequently during the period and that the longest she had not seen the applicant was two weeks.
- Three photocopied envelopes addressed to the applicant at [REDACTED] Los Angeles, California, with postmarks that appear to have been altered by hand. No originals submitted in the file.
- A photocopy of a savings account booklet from California Federal Savings and Loan Association, dated December 16, 1983, bearing the applicant's name as trustee for [REDACTED] (Friend).
- A copy of a State of California Identity Card with an issue date of November 3, 1986.
- A photocopy of a certificate of from South Gate Community Adult School, dated March 19, 1984, and a photocopy of an Achievement Award from Los Angeles City Unified School District, Division of Career and Continuing Education dated in 1986.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The documentation submitted is not probative and credible.

The letter of employment from [REDACTED], owner of K-Tee Company, Inc., does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address during the periods of employment and did not indicate whether there were periods of layoff. [REDACTED] stated that he "discharged" all company records prior to 1990, thereby precluding USCIS from verifying the records to determine whether [REDACTED] was in fact the owner of K-Tee Company, Inc., whether the applicant was actually employed during the periods indicated. The letter is not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during the periods indicated. The earnings statements submitted in the record were from August 1988 and beyond – which is beyond the requisite period and will not be considered in this decision. In addition, while the letter indicated that the applicant was employed by the company from November 1986, the applicant indicated on the Form I-687 (application for status as a temporary resident) he filed in 1991, that he was employed by the company from January 1987. The applicant did not submit any evidence to resolve or justify the inconsistency in the record of employment or explain why she had copies of her earnings statement from the company from August 1988 and did not have copies prior to August 1988 back to 1986 when she allegedly began working for the company. In view of the substantive deficiencies and contradictions, the letter of employment has limited probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The fill-in-the-blank affidavit from [REDACTED], dated November 6, 2001, provides some basic information such as the addresses claimed by the applicant during the period 1981 to 2001, but provided no detail information about the applicant's life in the United States such as where she worked, or the nature and extent of her relationship with the applicant in the United States. Considering the length of time the affiant claims to have known the applicant – since 1981 – the affiant provide remarkably little information about the applicant's life in the United States and their interactions over the years. Nor is the affidavit accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiant's personal relationship with the applicant in the United States during the 1980s. In addition, the addresses listed by the affiant as the applicant's residences in the United States are inconsistent with those stated by the applicant on the Form I-687. In view of these substantive shortcomings, the AAO finds that the affidavit has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The envelopes in the record have foreign stamps and postmarks dating from 1986. The envelopes do not bear United States Postal date stamps to indicate that the envelopes were received and processed in the United States before delivery to the applicant. None of the envelopes dated from before January 1, 1982. For the reasons discussed above, the envelopes

have limited probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The record reflects that the applicant has submitted questionable documents in support of his application. There the reliability of the remaining documents in the record consisting of – a photocopy of a savings account booklet dated December 16, 1983, listing the applicant as the trustee of the account holder, a photocopy of a State of California Identity Card with an issue date of November 1986, and a photocopy of a certificate from South Gate Community Adult School and a photocopy of an Achievement Award from Los Angeles Unified School District dated in 1986 – is suspect. None of the documents date before January 1, 1982. Thus, it has to be concluded that the applicant has not submitted credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988.

For the reasons discussed above, 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. 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.