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

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: BALTIMORE, MD Date: SEP 09 2009

MSC 03 168 61865

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 forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: On March 17, 2003, the applicant filed an application for status as a lawful 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). That application was denied by the director, Baltimore, Maryland and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director for further consideration in accordance with the following analysis.

The director found that the record indicates that the applicant is inadmissible because she entered into a marriage with a U.S. citizen for the sole purpose of gaining an immigration benefit for which she was not qualified and that she has not received a waiver of this ground of inadmissibility; and that she was in the United States in lawful status for at least part of the statutory period. Therefore, the director denied the application.

On appeal, the applicant claimed that she had shown that she was in unlawful status in a manner that was known to the government throughout the statutory period. She acknowledged that she was inadmissible for having made material misrepresentations in order to gain a benefit under the Act, namely she misrepresented herself as a lawful, F-1 nonimmigrant twice in 1986 and once in 1988 that she might be admitted to the United States. The applicant suggested that the AAO should remand the matter to the director that she might file the Form I-690, Application for Waiver of Grounds of Excludability, and request that this ground of excludability/inadmissibility be waived. The applicant indicated that the Immigration and Naturalization Service (INS), now U.S. Citizenship and Immigration Services (USCIS) never made a formal finding of marriage fraud in relation to the Form I-130, Petition for Alien Relative, which her U.S. citizen husband, [redacted] filed on her behalf.[1] Thus, the applicant asserted that USCIS may not now find her inadmissible for having committed marriage fraud. The applicant also indicated through counsel that the record establishes that she is otherwise eligible to adjust status under the LIFE Act.

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 considers all pertinent evidence in the record, including new evidence properly submitted on appeal.[2]

The AAO issued a notice of intent to dismiss in this matter on May 14, 2009. At the outset of that notice, the AAO pointed out that the director found the applicant eligible for class membership under

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[1] The record reflects that a judgment of absolute divorce (default) ended this marriage on February 18, 1999.

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

the LIFE Act. The AAO also stated that on September 9, 2008, the court approved a Stipulation of Settlement in the class action *Northwest Immigrant Rights Project, et al. vs. USCIS, et al.,* 88-CV-00379 JLR (W.D. Was.) (NWIRP). Class members are defined, in relevant part, as:

> 1. Class Members [include] all persons who entered the United States in a nonimmigrant status prior to January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A of the INA [Immigration & Nationality Act], 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below in paragraph 2, and who –
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> (A) between May 5, 1987 and May 4, 1988, attempted to file a complete application for legalization under § 245A of the INA and fees to an Immigration and Naturalization Service (INS) officer or agent acting on behalf of the INS, including a Qualified Designated Agency (QDE), and whose applications were rejected for filing (hereinafter referred to as 'Subclass A members'); or
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> (B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible for legalization, or were refused legalization application forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to file or complete a timely written application (hereinafter referred to as 'Sub-class B' members); or
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> (C) filed a legalization application under INA § 245A and fees with an INS officer or agent acting on behalf of the INS, including a QDE, and whose application
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> i. has not been finally adjudicated or whose temporary resident status has been proposed for termination (hereinafter referred to as 'Sub-class C.i. members'),
>
> ii. was denied or whose temporary resident status was terminated, where the INS or USCIS action or inaction was because INS or USCIS believed the applicant had failed to meet the 'known to the government' requirement, or the requirement that s/he demonstrate that his/her unlawful residence was continuous (hereinafter referred to as 'Sub-class C.ii members').
>
> 2. Enumerated Categories
>
> (1) Persons who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole,

warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.

(2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer reports of status violations) are not contained in the alien's A-file, and who are unable to meet the requirements of 8 C.F.R. §§ 245a.1(d) and 245a.2(d) without such records.

(3) Persons whose facially valid 'lawful status' on or after January 1, 1982 was obtained by fraud or mistake, whether such 'lawful status' was the result of

(a) reinstatement to nonimmigrant status;

(b) **change of nonimmigrant status pursuant to INA § 248;**

(c) adjustment of status pursuant to INA § 245; or

(d) grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

The AAO stated in the notice of intent to dismiss that the applicant is a member of the NWIRP class as enumerated above and that the AAO would adjudicate the application in accordance with the standards set forth in the settlement agreement.

NWIRP provides that LIFE legalization applications pending as of the date of the agreement shall be adjudicated in accordance with the adjudication standards described in paragraph 8B of the settlement agreement. Under those standards, the applicant must make a *prima facie* showing that prior to January 1, 1982, the applicant violated the terms of his or her nonimmigrant status in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government. It is presumed that the school or employer complied with the law and reported violations of status to the INS; the absence of such report in government records is not alone sufficient to rebut this presumption. Once the applicant makes such a showing, USCIS then has the burden of coming forward with proof to rebut the evidence that the applicant violated his or her status. If USCIS fails to carry this burden, the settlement agreement stipulates at paragraph 8B that it will be found that the alien's unlawful status was known to the government as of January 1, 1982. With respect to individuals who obtained their status by fraud or mistake, the applicant bears the burden of establishing that he or she obtained lawful status by fraud or mistake. The settlement agreement further stipulates that the general adjudicatory standards set forth in 8 C.F.R. § 245a.18(d) or 8 C.F.R. § 245a.2(k)(4), whichever is more favorable to the applicant, shall be followed to adjudicate the merits of the application once class membership is favorably determined.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

> (i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

See also 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

> (1) 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.

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, *vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(CSS), *League of United Latin American Citizens v. INS*, *vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(LULAC), or *Zambrano v. INS*, *vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993)(Zambrano). *See* 8 C.F.R. § 245a.10.

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 amenability to verification. 8 C.F.R. § 245a.12(e).

The regulation at 8 C.F.R. § 245a.2(b) provides in pertinent part:

> (b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:
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> . . .
>
> (9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on

> Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.
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> (10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

Section 212(a)(6)(C) of the Act provides in pertinent part:

> Misrepresentation. – (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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 application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

Documentary evidence may be in the format prescribed by USCIS regulations. *See id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with the regulatory requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* **Also, affidavits that have been properly attested to may be given more weight than a letter or statement.** *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. In evaluating the evidence, *Matter of E-M-* also states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. 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 petitioner or 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

On or near June 20, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On March 17, 2003, she filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The director denied the application because he determined that the applicant's entries into the United States as an F-1 student during the statutory period indicate that she was in the United States in lawful status for at least a portion of the statutory period. The director found that the applicant did not demonstrate that she remained in unlawful status throughout the statutory period.

On appeal, the applicant stated through counsel that the U.S. Social Security Administration records which she provided show that she was paying into Social Security and working in the United States during 1982. Based on this, she suggested that it was known to the government prior to January 1, 1982 that she was an international student who was working without authorization and who was not in lawful status. The applicant indicated that the F-1 student visas stamped in her passport, one of which she obtained in Douala, Cameroon on December 26, 1985 and the other which she obtained in Yaounde, Cameroon on January 20, 1988 were not obtained lawfully, but were instead obtained by fraud or mistake, as she had already spent years working without authorization in the United States and consequently she was no longer eligible for an F-1 visa when these were issued. The applicant indicated that the entries into the United States which she made: using an F-1 visa on January 7, 1986, on or about September 1, 1986 [3] and on January 22, 1988 do not represent lawful entries.

[3] There is no documentation of a September 1, 1986 entry in the record. However, there is a transcript from Marymount University, Arlington, Virginia which indicates that the applicant enrolled in classes at this university on September 1, 1986. There is also a stamp in the applicant's passport which indicates that she entered Toronto, Canada on August 22, 1986. Thus, the AAO

Rather, on those dates, the applicant was entering the United States, not as a lawful nonimmigrant, but entering to return to an unrelinquished residence, and to continue working without authorization and living unlawfully in the United States. As such, she was in unlawful status throughout the entire statutory period.

The AAO stated in the notice of intent to dismiss that where an applicant cannot demonstrate that her unauthorized employment was known to the government *prior* to January 1, 1982, as is the case here, she may not claim that her unlawful status was known to the government, based on such unauthorized employment, prior to January 1, 1982. However, the record indicates that the applicant entered as a B2, visitor for pleasure on August 1, 1981. That status was extended through December 15, 1981. As such, the applicant would have been required to file a quarterly address report with the INS by November 1, 1981. There is no evidence of such a filing in the record. Under the NWIRP settlement agreement, because the applicant failed to file this required address update, she was in violation of her status in a manner that was known to the government prior to January 1, 1982. *See* NWIRP settlement agreement, paragraph 8B.[4] There is no indication in the record that the applicant ever informed INS of any violations of her status, and then had her lawful, nonimmigrant status properly reinstated. Thus, in the notice of intent to dismiss, the AAO determined that the applicant was in unlawful status in a manner that was known to the government prior to January 1, 1982 and she remained in unlawful status throughout the requisite period.

On appeal, the applicant also indicated through counsel that the director erred when he stated that INS had made a specific finding that her marriage to [redacted] was entered into for the sole purpose of allowing the applicant to acquire an immigration benefit for which she was not eligible. This is not correct. The record reflects that the July 7, 1995 notice of decision issued to [redacted]

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finds that a preponderance of the evidence indicates that the applicant exited the United States on August 22, 1986 and she re-entered on or about September 1, 1986.

[4] The Form I-20, Certificate of Eligibility for "F-1" Student Status, dated September 22, 1981 in the record indicates that, on September 22, 1981 while the applicant was a student at Jefferson Business College, she acquired F-1 student status. The Form I-20 in the record is the version of this form as completed by Jefferson Business College before that college submitted the form to INS. As this college completed the form in its entirety on the applicant's behalf, provided her with a copy of this certificate of eligibility as an F-1 student and allowed her to complete the academic program described on this form, the AAO finds that a preponderance of the evidence indicates that the form was properly filed with the INS such that the applicant obtained F1 status as of September 22, 1981. This office notes as well that, according to the record, no quarterly address form, as required by nonimmigrants in this period, was received by INS on or before December 22, 1981, the date the quarterly address report presumably would have been due subsequent to the September 22, 1981 grant of F-1 status. Also in the record is the Form I-20 stamped by an INS Officer, Washington, D.C. District on November 27, 1984. This form indicates that by "INS request" the applicant's period of F1 authorized stay was converted to "duration of status" or D/S on November 27, 1984 while the applicant was enrolled at Strayer College. INS also granted the applicant authorization to work part-time on November 27, 1984. This November 27, 1984 grant of work authorization and of F1 status for duration of status was apparently also obtained through fraud or mistake.

[redacted] in relation to the Form I-130 which [redacted] filed on the applicant's behalf states that the petition was denied because the record indicates that throughout the period that the applicant and [redacted] claimed to have been married, the applicant was residing in Maryland and Mr. [redacted] was residing in Nebraska. There is no indication that the two of them visited each other during this period. Also, the applicant and failed to provide documentation of an ongoing marital relationship when requested to do so. Thus, the director in that matter found that the applicant's "marriage was entered into of the sole purpose of obtaining an immigration benefit" for which the applicant "not otherwise entitled." The director then stated that the "petition is therefore denied." Based on this, the director indicated in the Notice of Intent to Deny (NOID) that the applicant made material misrepresentations in order to procure a benefit under the Act, and is thus inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO concurs. The applicant has not demonstrated that she is eligible for a waiver of this ground of inadmissibility.

Further, as the applicant acknowledged on appeal, the record establishes that she misrepresented herself as a lawful, nonimmigrant, F-1 student upon admission to the United States twice during 1986 and once during 1988. Yet, according to the claims which she made in this proceeding, her intent upon returning on January 7, 1986, September 1, 1986 and January 22, 1988 was to continue working without authorization and to continue residing unlawfully in the United States. Thus, twice in 1986 and once in 1988, the applicant procured entry into the United States by willfully misrepresenting a material fact. The applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act based on these misrepresentations.

In addition, the record indicates that the applicant also misrepresented herself as eligible for F-1 status and work authorization before an INS officer at the Washington, D.C. District Office on November 27, 1984. Thus, it appears that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act based on these misrepresentations as well.

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 she is admissible to the United States. *See* 8 C.F.R. § 245a.12(e). The applicant might only overcome this particular ground of inadmissibility if she applies for and secures a waiver for the ground of inadmissibility at issue in the matter. *See* 8 C.F.R. § 245a.18(c).

The AAO stated in the notice of intent to dismiss that the applicant had submitted the Form I-690 which is the form she must file to request a waiver of the ground of inadmissibility set forth at section 212(a)(6)(C)(i) of the Act. On this form, she was instructed to state reasons why her request should be granted. Yet, the applicant failed to provide any reason. In addition, she did not submit any documentation with that form in support of her request that any grounds of inadmissibility to which she is subject be waived. The Form I-690 has not yet been adjudicated. As such, the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act.

As the director was provided the Form I-690 but had not yet made a decision on the matter, in the notice of intent to dismiss, the AAO provided the applicant an opportunity to file documentation that might complete the request made on that form.

On appeal, the applicant also indicated that the evidence of record establishes that she is otherwise eligible to adjust under the late legalization provisions of the LIFE Act.

At issue in this proceeding is whether the applicant is able to establish: that she resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988; that she is admissible to the United States; and that she is otherwise eligible to adjust under the LIFE Act.

The notice of intent to dismiss pointed out that the record includes the following adverse or inconsistent evidence regarding these points:

1. The Form I-687 that the applicant signed under penalty of perjury on which she indicated at item 33 that she began residing continuously in the United States during June 1983.

2. The Form for Determination of Class Membership in *CSS v. Meese* which the applicant signed under penalty of perjury on June 19, 1990 on which, in response to the question of whether she had resided continuously in the United States in unlawful status since prior to January 1, 1982, she stated, "No."

3. The Form G-325A, Biographic Information, which the applicant signed on March 11, 2003 that lists her as having the following address from September 1956 through 1985: [redacted]

4. The Form I-690 on which the applicant requested that the director waive the ground of inadmissibility to which the applicant is subject. The form does not include any supporting documentation or stated reasons why the request should be granted. The Form I-690 has not been adjudicated.

The notice of intent to dismiss pointed out that the record includes inconsistent information regarding whether the applicant began residing continuously in the United States from a date prior to January 1, 1982 and throughout the statutory period.

These discrepancies cast doubt on the authenticity of all the evidence of record, including the applicant's claim that she resided continuously in the United States throughout the statutory period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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).

Such inconsistencies in the record may only be overcome through independent, objective evidence of the claim that the applicant resided *continuously* in the United States from a date prior to January 1, 1982 through May 4, 1988.

In response to the notice of intent to dismiss, the applicant submitted contemporaneous evidence, employment verification letters, affidavits, statements, copies of applications filed previously, a sworn statement and a brief to support her claim that she resided continuously in the United States throughout the requisite period, and to overcome any discrepancies in the record. For example, the applicant submitted:

- A copy of the Form I-94, Arrival-Departure Record, stamped to indicate that the applicant entered the United States at New York City on August 1, 1981 and later had her period of authorized stay extended through December 15, 1981.
- A copy of her transcript from Jefferson Business College, Washington, D.C., which indicates that the applicant attended this college from September 1981 through June 1982.
- A copy of the applicant's June 18, 1982 Executive Secretarial Diploma from Jefferson Business College.
- A copy of the June 8, 1982 letter on Strayer College, Washington, D.C. Campus, letterhead stationery which indicates that the applicant had begun a Bachelor of Science Degree in Business Administration at Strayer College and that some of her credits from Jefferson Business College had been transferred to Strayer College.
- A copy of the October 13, 1982 letter on Strayer College letterhead stationery which indicates that the college had received the letter from Dr. [redacted], notifying Strayer College that the doctor was advising the applicant to refrain from classes for medical reasons, and in which Strayer College asked the applicant to also formally withdraw from classes, if she had not yet done so.
- A copy of the Form I-687 which indicates that from November 1982 through June 1984 the applicant worked as a nursing aide at Hyattsville Manor, Hyattsville, Maryland.
- An original, official transcript from Strayer University[5] which states: the applicant's grades for summer 1982, winter 1983, spring 1983, summer 1983, fall 1983, winter 1984, spring 1984, summer 1984, fall 1984, winter 1985, spring 1985, summer 1985, fall 1985, winter 1986, and spring 1986; and that a Bachelor of Science Business Administration degree was conferred to the applicant on June 23, 1986.
- A copy of an employment verification letter dated March 2, 1990 on NurseFinders, Falls Church, Virginia letterhead stationery which indicates

[5] Apparently by 2008 when the transcript was issued Strayer College had become Strayer University.

that the applicant worked for this agency from February 1984 through the date that letter was signed.

- A copy of the applicant's 2004 Social Security Administration statement which demonstrates that the applicant paid into Social Security each year from 1982 through 2003.
- A statement from the applicant's brother, [redacted], which bears that doctor's name and address stamp.[6] [redacted] statement indicates that the applicant resided with him at his apartment in Langley Park, Maryland when she arrived in the United States in August 1981, and that she moved with the doctor to [redacted] Rockville, Maryland, shortly thereafter. **The statement also indicates that the doctor paid for the** applicant to attend Jefferson Business College and Strayer College.
- A copy of a check dated January 12, 1982 preprinted with [redacted] name and the [redacted] address referred to above, signed by the doctor and made out to Jefferson Business College with the applicant's initials in the memo line of the check.
- A copy of three checks drawn on the same checking account as the January 12, 1982 check (above) signed by [redacted] dated: September 28, 1981, October 19, 1981 and November 23, 1981, each made out to Jefferson Business College with "for [redacted] – Registration", tuition", and an illegible note in the memo line of the respective checks.
- A copy of the applicant's certificate from Health Management, Inc., Regency School which states that the applicant completed requirements for practical nursing on November 4, 2005.
- A printout from the Maryland Board of Nursing Web Lookup which lists the applicant as a Licensed Practical Nurse as of November 4, 2005.
- An employment verification letter dated July 16, 2009 on The Jefferson, A Sunrise Senior Living Condominium Community, Arlington, Virginia letterhead stationery which indicates that the applicant has worked full time as a Licensed Practical Nurse at this facility since 2006 and that she earns over $22 per hour.
- A copy of the applicant's July 15, 2009 sworn statement. In this statement, the applicant indicated that when completing the Form I-687, she made a mistake at item 33 and did not finish answering this question which asked her to list all her residences in the United States. Instead, she listed her addresses back to 1983, not back to 1981 when she began residing in the United States. She indicated, in keeping with the Form I-687, that after her August 1, 1981 entry, her only absences from the United States were December 17, 1985 through January 7, 1986, August 22, 1986 through September 1, 1986, and December 23, 1987 through January 22, 1988. The

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[6] [redacted] is listed at the same address displayed on this stamp at the LifeBridge Health Physician Directory found at http://www.lifebridgehealth.org/physdir.cfm?id=14&action=detail&ref=26436 (accessed August 10, 2009).

applicant also indicated that her contemporaneous evidence, such as her transcripts, demonstrate that she actually entered and began residing continuously in the United States in 1981. She pointed out that the Form I-687 itself supports her claim that she simply did not finish her answer at item 33 in that at item 36 she stated that from November 1982 through June 1984 she worked at Hyattsville Manor, Hyattsville, Maryland. The applicant also indicated that where the Form for Determination of Class Membership in *CSS v. Meese* asked her whether she had resided continuously in the United States since prior to January 1, 1982, she interpreted "continuously" to mean without any absences. That is why she answered "No" to that question. She also indicated that the contemporaneous evidence that she submitted, such as her transcripts, demonstrate that she simply made an error when she stated on the Form G-325A that she resided in Cameroon from the year of her birth through 1985, rather than through 1981.

The AAO finds that the applicant has established that she resided continuously in United States during the requisite period.

In response to the notice of intent to dismiss, the applicant also submitted statements and documentation to complete the request which she made on the Form I-690. The AAO remands the matter to the director that he might adjudicate the Form I-690 taking into consideration the information submitted in response to the notice of intent to dismiss and that the director might complete the adjudication of the instant application.

ORDER: The application is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the applicant, is to be certified to the AAO for review.