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

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U.S. Citizenship
and Immigration
Services

[redacted]

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FILE: [redacted] Office: NEW YORK CITY Date: SEP 11 2009

MSC 02 247 60950

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 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 applicant has submitted sufficient credible evidence to establish that she meets the continuous residence requirement for legalization under the LIFE Act. Counsel submits documentation to establish the identity and residence information of some of the affiants who submitted affidavits on the applicant's behalf.

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 November 1980, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on June 4, 2002.

In a Notice of Intent to Deny (NOID), dated August 9, 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 an unlawful status through May 4, 1988. The director specifically found that the affidavits and the other documentation submitted by the applicant in support of her application were substantively deficient. The applicant was granted 30 days to submit additional evidence.

The applicant timely responded and submitted updates to affidavits previously in the record as well as identity documents for some of the affiants. On September 11, 2007, the director issued a Notice of Decision denying the application based on the fact that the information and documentation submitted by the applicant in response to the NOID were insufficient to overcome the grounds for denial.

On appeal counsel asserts that the director did not properly evaluate the evidence of record. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for legalization under the LIFE Act. Counsel submits documentation to establish the identity and residence information of some of the affiants who submitted affidavits on the applicant's behalf.

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 documentation that the applicant submitted in support of her claim to have entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status during the requisite period for LIFE legalization, consists of the following:

- A letter from [redacted] of St. Bartholomew's Church in Elmhurst, New York, dated August 20, 1992, stating that the applicant has worshiped and attended religious services at St. Bartholomew's church since 1981.

- A series of affidavits from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s.

- A receipt from dated December 3, 1986, with handwritten notation of the applicant's name and no address, date stamps or other official markings to authenticate the date it was written.

  Photocopied envelopes addressed to the applicant at [redacted] Jackson Heights, New York, with illegible postmark dates as if they have been altered by hand, from individuals in Colombia.

  Three photographs of the applicant with no notation or marking as to when and where they were taken.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The letter from [redacted] of St. Bartholomew's Church in Elmhurst, New York, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E)

include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. Although the letter indicated the applicant's address in the United States, it does not indicate whether the applicant is a member of the church and if so, the precise date of her membership. The letter merely stated that the applicant "has worshiped and attended religious services in St. Bartholomew's Church since 1981 until the present time." The letter does not indicate how and when [redacted] met the applicant, and whether his information about the applicant was based on [redacted] personal knowledge, St. Bartholomew's Church records, or hearsay. Since the letters does not comply with sub-parts (C), (E), (F) and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. The letter is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits in the record from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s, have minimalist or fill-in-the-blank formats with very little input by the affiants. Although the affiants claim to have known the applicant since the early 1980s, the affiants provided very few details about the applicant's life in the United States and the nature and extent of their interactions with the applicant over the years. The affidavits are not accompanied by any documentation – such as photographs, letters or the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. Most of the affiants did not provide documentation of their own identities and residence in the United States during the requisite period. For all the reasons stated above, the affidavits have little probative value. They are not persuasive evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988.

The receipt dated December 3, 1986, has a handwritten notation of the applicant's name and no address, no date stamp or other authenticating mark to verify the date it was written. Even if the AAO accepted the receipt as evidence that the applicant was in the United States in December 1986, it is not sufficient credible evidence to establish that the applicant resided in the United States for the year 1986, much less before January 1, 1982 and beyond. Thus, the receipt has little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The envelopes addressed to the applicant at [redacted], New York, from individuals in Colombia, have illegible postmarks which look like they may have been altered by hand. The envelopes do not bear United States Postal Service markings to show that the envelopes were received and processed in the United States before delivery to the applicant at the address indicated. Thus, the envelopes have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period for adjustment of status under the LIFE Act.

As for the three photographs in the file, they have no probative value as evidence of the applicant's residence in the United States during the statutory period. There are no notations on the photographs as to when and where the photographs were taken, and even if they were taken during the 1980s they would not establish that the applicant resided in United States at that at that time.

Based on the analysis of the evidence in the record, the AAO concludes that the applicant has failed to establish that he 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.