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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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FILE: [redacted] Office: CHERRY HILL Date: SEP 2 2 2009
MSC-02-243-68006

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, Cherry Hill. The case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The director stated that the applicant did not provide sufficient evidence to meet her burden of proof to establish her eligibility for the benefit sought.

On appeal, the applicant, through counsel asserts that she has established her unlawful residence for the requisite time period. Counsel also argues that the director applied the preponderance of evidence standard incorrectly.

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she 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.

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 "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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation

when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 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 the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits and declarations. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The declaration from [redacted] and affidavits from [redacted], and [redacted] and [redacted] all state that they have known the applicant for years and attest to the applicant being physically present in the United States during part or all of the required period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The AAO notes that several of the affidavits submitted provide information that is inconsistent with the record of proceeding. The affidavit submitted by [redacted] is dated August 28, 1989 and June 19, 1991. The AAO will use the date that the affidavit was notarized, June 19, 1991. In his affidavit, [redacted] states that the applicant was his tenant during the previous 6 years, or

from 1985 to 1991. [redacted] states that the applicant lived in different apartments in the same building. [redacted] lists two addresses for the applicant [redacted] and [redacted] Princeton Township, New Jersey. [redacted] states that the applicant currently lives at [redacted] and pays $750 per month for a two bedroom apartment. The addresses provided by Mr. [redacted] are not listed in the applicant's Form I-687 and are inconsistent with the addresses provided by the applicant during the time period described by [redacted]. The applicant's Form I-687 lists an address in Oregon from June 1985 to January 1988 and an address in Minnesota from March 1991 to October 1991. The affidavit submitted by [redacted] states that she was introduced to the applicant in Lancaster, Pennsylvania in April 1980. The applicant's Form I-687 does not list an address for the applicant in Pennsylvania. The applicant's Form I-687 lists an address in California from November 1980 to April 1981. In addition, in a class member form in the record of proceeding, the applicant listed her first date of entry into the United States as November 5, 1980, after [redacted] claims to have met the applicant in Pennsylvania. 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 unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant submitted employment letters from various employers. The record of proceeding contains a letter on M. R. Ranch letterhead signed by [redacted] and dated December 18, 1989. The letter states that the applicant worked for M. R. Ranch from November 1980 to April 1981. The record of proceeding contains a letter on L & A Dry Cleaners letterhead signed by and dated February 10, 1990. states that the applicant worked for L & A Dry Cleaners from April 1981 to June 1985. The record of proceeding also contains a letter on Trail-Blazer Berries letterhead signed by [redacted] and dated September 19, 1989. Mr. [redacted] states that the applicant worked for Townsend Farms, Inc. during the years 1985, 1986, 1987, and 1988 for a minimum of 20 days in the agricultural area. These letters do not state the applicant's position, her wages, or the source of the information.

The record of proceeding also contains several employment letters and forms from the Sands Hotel and Casino. In a letter on Sands letterhead signed by [redacted] and dated September 4, 2001, [redacted] states that the applicant has been employed by the Sands Casino Hotel as a fast food cook since June 12, 2001. In a letter on Sands letterhead signed by [redacted] and dated September 18, 2001, [redacted] states that the applicant was been employed by the Sands Casino Hotel from July 4, 1994 to May 27, 1995 as a fast food cook before being laid off. In a letter on Sands letterhead signed by [redacted] and dated August 22, 2005, [redacted] states that the applicant has been employed by the Sands Casino Hotel as a "kitchen utility" from June 10, 1981 to the present. The record of proceeding also contains an employee request form on Sands letterhead dated November 29, 1997, which lists a hire date of July 1, 1994. The record contains a food and beverage time-off request on Sands letterhead dated January 20, 2005, which lists a hire date of June 10, 1981. The record contains a vacation verification form dated January 23, 2005, which lists a "participant's anniversary date" of June 10, 1981. The AAO notes that [redacted] letters and the forms provide inconsistent starting dates for the applicant. As stated previously, 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. *See Matter of Ho, supra.*

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. Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), the employer letters submitted do not provide sufficient information. Given these deficiencies, these letters have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The record of proceeding also contains receipts from [redacted] the applicant's optometrist. The receipts are October 1980 and August 25, 190 [sic]. The AAO notes that the marriage certificate in the record of proceeding states that the applicant was married to [redacted] on February 7, 2001 and the receipt submitted refers to the applicant as "[redacted]". The applicant also submitted an invoice from Furniture Basics dated January 4, 1981. The invoice lists the applicant's address as [redacted] Princeton, New Jersey. The address listed on the invoice is inconsistent with the applicant's Form I-687. In the Form I-687, the applicant listed an address in California from November 1980 to April 1981. Further, the Form I-687 states that the applicant lived at the address listed in the invoice from January 1988 to March 1991. As stated previously, 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. *See Matter of Ho, supra.*

The record of proceeding contains copies of two prescriptions for the applicant from The Medical Center at Princeton dated June 4, 1982 and October 4, 1983. The AAO notes that the

prescriptions state that the physician's name must be printed or stamped in block letters or the prescription cannot be filled according to New Jersey law. Neither prescription meets this requirement; and therefore, these prescriptions have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States during the requisite period.

The record of proceeding contains several documents from [redacted] Dr. [redacted] address is in Princeton, New Jersey. The applicant submitted a statement indicating that she was treated by [redacted] on December 8, 1987; December 15, 1987; and December 22, 1987. The record contains a receipt from [redacted] dated December 22, 1987 and a dental record indicating that she was treated in December 1987. Finally, the applicant submitted a letter on [redacted] letterhead signed by [redacted] and dated June 25, 1991. Dr. [redacted] states that the applicant has been a patient since December 8, 1987. The AAO notes that this information is inconsistent with the applicant's Form I-687. In her Form I-687, the applicant listed an address in Oregon from June 1985 to January 1988. As stated previously, 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. *See Matter of Ho, supra.*

The record of proceeding contains a form from the Princeton Adult School that is dated September 18, 1983. The applicant also submitted a letter from the U.S. Department of Labor dated October 28, 1988 indicating that a Form ETA 750 was filed on behalf of the applicant on May 1, 1987. This is some evidence that the applicant was in the United States on May 1, 1987.

Finally, the applicant submitted copies of membership cards for members residing in California and New Jersey. The California card was issued on August 25, 1981 and lists the applicant's height as 4 feet 5 inches tall. The New Jersey card was issued in November 1982 and lists the applicant's height as 5 feet tall. The AAO notes that the cards list addresses not listed in the applicant's Form I-687. Further the cards do not indicate the names of the pertinent organizations. The record of proceeding contains no evidence that the applicant belonged to any organizations during the requisite time period and the Form I-687 lists no affiliations or organizations at part #31. Therefore, these documents have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have entered the United States in 1980. The applicant has not submitted any additional evidence in support of her claim that she was physically present or had continuous residence in the United States during the entire requisite period or that she entered the United States in 1980.

On appeal, counsel states that the identification cards in the record of proceeding were issued by the states of California and New Jersey. However, the cards state that they are membership cards and not state identification cards or driver's license cards.

On appeal, counsel also states that the applicant entrusted her documents to a notary who kept her documents and then disappeared. Although counsel notes that the applicant was not assisted by an attorney but by a notary, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on her behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

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.