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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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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAY 27 2010

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.

[redacted]
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Los Angeles and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act. The director found that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant provided several inconsistent accounts of her absences, her children's births and her residence in the United States during the relevant period.

On appeal, the applicant indicates that the director erred in concluding that she misrepresented her foreign born children, and she indicates that the director's decision is erroneous. The applicant requests a copy of the record of proceedings. This request was processed on October 13, 2009.[1]

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(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 under the provisions of section 212(a) of the Act, 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).

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. 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.

[redacted]

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 petitioner 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 (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 or petition.

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

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

A review of the record reveals that the applicant has submitted the following:

1). A Form I-687 dated April 22, 1990 in which she indicates that she first entered the United States in January 1977. At part #32, the applicant lists one child, [redacted] born in Guatemala in 1973. She also lists one absence during the relevant period, from July 27, 1987 until August 29, 1987.

2). A Form I-687 dated August 31, 2004 in which the applicant indicates that she first came to the United States in May 1980. At part #32 the applicant lists three absences during the relevant period: from April 1982 until October 1984; September 1985 until February 1986; March 1987 until August 1987. A fourth absence from February 1984 until September 1989 is listed, however, the applicant indicated at her interview with United States Citizenship and Immigration Services (USCIS) that this was an error. She confirmed the first three absences.

3). A Form I-215W, Record of Sworn Statement in Affidavit Form, dated April 30, 2008, in which the applicant indicates that she was absent from the United States April 1982 until October 1984; September 1985 until February 1986; and, March 1987 until August 1987.

4). A Form I-485 LIFE Act application November 7, 2002 in which the applicant in which the applicant indicates that she has five children: [redacted] All children were born in Guatemala.

On March 17, 2009, the applicant was interviewed by United States Citizenship and Immigration Services (USCIS) in connection with her LIFE Act application. During that interview, the applicant indicated that she departed the United States two weeks prior to the birth of each child born in Guatemala and that she reentered the United States within 45 days each time.

On March 18, 2009, the director issued a Notice of Intent to Deny (NOID) noting the above inconsistencies and providing the applicant with an opportunity to respond. The director further noted that the applicant's stated absences exceed the 45 day limit for a single absence, thereby interrupting any continuous residence that the applicant may have established. Finally, the director noted that the applicant willfully misrepresented a material fact in violation of Section 212(a)(6)(C) of the Immigration and Nationality Act (Act) when she omitted the her foreign-born children on several of her applications.

On April 21, 2009, the applicant, through counsel, requested additional time to respond to the NOID, but failed to submit any additional evidence or information in support of her eligibility. Thus, the director denied the application.

On appeal, the applicant indicates that she left the United States only one time during the relevant period, from July 27, 1987 until August 29, 1987 and that her only child is [redacted] born prior to the relevant period. She indicates that the other children listed on her LIFE Act application are actually her sister's children who registered them in the applicant's name. She also indicates that two of the children are step-children and that she did not depart the United States for their births. 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 applicant submits 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 proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. The applicant has not submitted any independent objective evidence that resolves the numerous material inconsistencies contained throughout the record of proceedings. Her inconsistent testimony casts doubt on the reliability of all of the evidence.

Furthermore, the applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the

United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 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.2(d)(5).

The AAO finds that each of the applicant's absences, from the United States April 1982 until October 1984; September 1985 until February 1986; and, March 1987 until August 1987, constitute a break in continuous residence as they exceed the 45 day limit. Taken together, the applicant's absences also consist of more than the 180 days allowed in aggregate. The applicant's testimony that her translator miswrote the days of her absence is not sufficient evidence to resolve the inconsistency in her favor.

As is stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

Given the applicant's inconsistent testimony it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.