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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

L2

FILE: [redacted] Office: Los Angeles Date: APR 07 2003

IN RE: Applicant: [redacted]

PETITION: 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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The district 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.

On appeal, the applicant reaffirms her claim to have continuously resided and to have been employed in the U.S. since 1981. The applicant also submits a separate statement addressing the district director's denial of her application.

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. 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 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(c).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Although CIS 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).

In an attempt to establish continuous unlawful residence since prior to January 1, 1982, the applicant submits the following:

- A letter from [redacted] General Manager [redacted] (JPE), who states the applicant had been working as a route cook on various JPE catering trucks from 1981 through 1983;
- A letter from [redacted] General Manager [redacted] who asserts that the applicant had worked as a route cook on various JPE catering trucks from 1981 through 1983;
- A letter from [redacted] who attests to the applicant having arrived in the U.S. in 1981 and having resided in this country since that date. The affiant bases his knowledge on having known the applicant since 1960, at which time both he and the applicant resided in Colombia;

- An affidavit dated January 26, 2004 from who states she has known the applicant since 1960 when she and the applicant resided in Colombia, and attests to the applicant having continuously resided in the U.S. since 1981;

  - a prior affidavit from who attests to having known the applicant since 1984 and to the applicant having resided in the U.S. since 1981. The applicant bases her knowledge on the applicant having babysat for her two children from 1984 to 1985;

- A photocopy of a barely-legible receipt dated June 12, 1982 from Little House Furniture, which is made out to the applicant;

- A photocopy of a receipt dated October 8, 1983 from Morales Jewelry, which is made out to the applicant;

- An affidavit from who attests to having known the applicant since 1985;

- An affidavit from who attests to having known the applicant since 1985. The affiant bases his knowledge on the applicant having worked for him as a live-in babysitter since 1985;

- A letter from Associate Pastor, St. John the Baptist Church, who states that he has known the applicant for "a long time" and that the applicant had attended services at his previous church, St. Aloysius;

- An affidavit from who attests to the applicant having resided in the U.S. since 1981. The affiant bases her knowledge on having known the applicant since 1965 when both she and the applicant resided in Colombia. The affiant also indicated the applicant worked with her as a cook from 1981 to 1983 at JPE Catering; and

- A photocopied letter from who states the applicant maintained a checking and savings account at Wells Fargo from February 1982 through November 1989.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish continuous residence and specify that "any other relevant document" may be submitted. The applicant in this case has provided contemporaneous evidence, affidavits and third-party statements which could possibly be considered as evidence of continuous residence during the period under discussion. In the notice of decision, however, the district director determined that applicant's claim in her documentation and at the time of her adjustment interview to have first entered the U.S. in 1981 was contradicted by her statement at the time of her class membership interview on November 8, 1997. On this occasion, the applicant signed a sworn statement under oath in her native language and in the presence of an examining officer that her first entry into the U.S. was in 1985. The statement by the applicant reads, "I [applicant's name] came for the first time to the United States in July 1985." The district director also made reference to the applicant's letter of January 16, 1997 to District Director of the Immigration and Naturalization Service or INS (now, Citizenship and Immigration Services or CIS). In this correspondence, the applicant stated, "I have continuously lived in this country [the United States] since 1985, since I first came into the country with my passport from Columbia." The record also contains a photocopy of a page from the applicant's passport, indicating that a B-

2 visitor visa was issued to the applicant in Bogota, Colombia, on June 3, 1985, and that she entered the U.S. on this nonimmigrant visa on July 25, 1985.

On appeal, the applicant reaffirms her claim to have first entered the U.S. in 1981 without inspection at San Ysidro, California. In attempting to explain the apparent contradiction between her claim and her statements to INS at the time of her class membership interview, the applicant asserts that her previous statements regarding her 1985 entry had been misunderstood. According to the applicant, what she had meant to say was that her entry into the U.S. from Colombia in July 1985 was her first *legal* entry to the U.S. with a passport. Nevertheless, the applicant's statement at her November 8, 1997 interview, in her native Spanish, that she came to the U.S. "for the first time" in July 1985," along with her subsequent written communication of January 16, 1997 to District Director Rogers, in which she indicated having continuously resided in the U.S. since 1985, leave little room for ambiguity on this issue.

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish continuous residence and specify that "any other relevant document" may be submitted. As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. While the affidavits, third-party statements and photocopied store receipts provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, certain questions have arisen which impact on the overall credibility of her claim. However, the affidavits submitted in support of the application present additional inconsistencies or are deficient in providing basic and necessary information, thus falling far short of containing what such documents should include in order to render them probative for the purpose of establishing an applicant's continuous unlawful residence during the period in question.

The aforementioned affidavit from [redacted] indicates the affiant is aware the applicant arrived in the U.S. in 1981. In the notice of decision, the district director observed that at the time of her adjustment interview, the applicant stated that she resided [redacted] after entering the U.S. in 1981. However, during a prior interview on July 29, 1994 in connection with voluntary departure proceedings, the applicant stated under oath in the presence of an INS officer that she had resided with [redacted] since 1986 or 1987. This unresolved inconsistency diminishes the credibility of the applicant's claim as well as that of [redacted] affidavit.

The affidavit dated January 26, 2004 from [redacted] indicates the affiant had known the applicant since 1960 when both resided in Colombia and attests to the applicant having continuously resided in the U.S. since 1981. However, in a prior affidavit from [redacted] the affiant specified that she had only been acquainted with the applicant since *1984*, when the applicant began babysitting for the affiant's children. The applicant has not endeavored to resolve this obvious inconsistency.

The photocopied letter fro[redacted] includes what appears to be a partial letterhead logo from Wells Fargo at the top of the correspondence. In his letter [redacted] indicates the applicant maintained a checking and savings account at Wells Fargo from February 1982 to November 1989. However, there is no indication on the correspondence of [redacted] title or department or connection with Wells Fargo such as would render him knowledgeable as to such information. Moreove[redacted] letter is dated August 11, *1990*. Yet, at the bottom of the communication, the copyright date of the Wells Fargo correspondence form is indicated as "*1999*." Under the circumstances, the document from [redacted] must be deemed less than credible. In this connection, it should be noted that doubt cast on any aspect of the petitioner's proof may lead

to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner 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).

Further examination of the applicant's documentation discloses additional deficiencies. The affidavit from attests to the affiant's knowledge of the applicant's residence in the U.S. since 1985, but fails to specify the actual basis for their acquaintanceship. Nor does the affidavit provide any phone number, thereby rendering the document less amenable to telephonic verification by CIS. The letter from the Associate Pastor of St. John the Baptist Church makes reference to the applicant having previously attended services at another church, but provides no dates or time frame such as might serve to support the applicant's continuous residence claim. In addition, the letter from of JPE catering and that from Patricia Maxson of Okeh Caterers, both of which attest to the applicant having worked as a route cook on JPE trucks from 1981 to 1983, contain language which is nearly identical. Such documents have the appearance of having been prepared *for* the correspondents rather than *by* them and, as such, create doubt as to their having originated from the correspondents' personal knowledge.

Given the applicant's failure to establish her entry or residence in the U.S. *before* January 1, 1982, along with her inability to credibly resolve the inconsistencies and discrepancies raised in her claim, testimony and supporting documentation, it is concluded that she has failed to establish continuous residence in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required. Accordingly, the applicant is ineligible for permanent resident status under section 1104(c)(2)(B) of the LIFE Act.

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