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U.S. Citizenship
and Immigration
Services

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FILE: MSC 01 333 60405 Office: LOS ANGELES Date: NOV 02 2006

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:



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. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
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, California, and is now before the Administrative Appeals Office 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.

On appeal, counsel states that the applicant has submitted documentation to establish that she resided continuously in the United States during the required period. Counsel submits a brief and copies of previously submitted documentation in support of the appeal.

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; 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(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 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.

Although Citizenship and Immigration Services (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 undated "self-employment letter," the applicant stated that she has resided continuously in the United States since 1980, and that she considered herself self-employed. On her undated Form I-687, Application for Status as a Temporary Resident, the applicant indicated that she had been self-employed as a babysitter from 1981 to the "present." The applicant did not complete block 33 of the I-687 application, which asks for all residences at which she lived from her first entry into the United States.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A June 4, 1990 affidavit from [REDACTED], in which he stated that the applicant has lived in the United States since September 1980. [REDACTED] did not indicate his relationship to the applicant and did not state the basis of his knowledge regarding her residency in the United States.
2. A June 4, 1990 affidavit from [REDACTED], in which she stated that the applicant has lived in the United States since October 1980. [REDACTED] did not indicate her relationship to the applicant and did not state the basis of her knowledge regarding the applicant's residency in the United States.
3. A June 4, 1990 affidavit from [REDACTED] in which he stated that the applicant has lived in the United States since October 1981. [REDACTED] did not indicate his relationship to the applicant and did not state the basis of his knowledge regarding her residency in the United States.
4. A December 7, 2002 affidavit from [REDACTED] in which he stated that he and the applicant have been acquaintances since 1981, that she is a close friend, and that he employed her from 1981 to 1984. Mr. Navarro did not indicate the capacity in which he employed the applicant.
5. Identical statements, all notarized and sworn to before [REDACTED] a notary in Riverside County, California on December 7 or 11, 1995, from [REDACTED] Eleazar [REDACTED] and [REDACTED]. The statements certify that the signer has known the applicant since 1981 and that she has lived in the United States. The letters do not, however, state that the applicant has lived in the United States for the entire period that the signer knew her. Further, although each states that he or she is willing to testify as to the accuracy of the statement, none provide an address or telephone number at which he or she can be reached. Additionally, none indicate what, if any, relationship they have with the applicant or the basis of his or her knowledge concerning the applicant's presence and residency in the United States. When asked about those who submitted statements on her behalf, the applicant stated in her June 17, 2003 LIFE Act interview that she met [REDACTED] in 1990 and [REDACTED] in 1985 or 1987. Therefore, their statements that they have known the applicant since 1981 lack credibility. 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).
6. An envelope addressed to the applicant at a post office box in Moreno, California with a canceled postmark of July 31, 1981. Other envelopes addressed to the applicant in the United States contain illegible postmarks.
7. A December 7, 2002 affidavit from Concepcion [REDACTED] in which she stated that she has known the applicant since 1984, that they are close friends, and [REDACTED] at she employed the applicant as a babysitter from July 1984 to January 1987.

8. A December 7, 2002 affidavit from [REDACTED] in which she stated that she has known the applicant since 1987, that she is a close friend and that she employed the applicant as a babysitter from March 1987 to December 1989.
9. A May 31, 1990 affidavit from [REDACTED] in which he stated that the applicant was out of the country from July 10 to August 10, 1987. [REDACTED] did not indicate the basis of his knowledge of the applicant's absence.
10. An April 14, 1991 letter from [REDACTED] of the Hispanic Advocacy Service, in which she stated that the applicant came in for an appointment on December 12, 1987, but was told by the staff that she did not qualify for the amnesty program. Although this letter appears on the Hispanic Advocacy Service letterhead, it is not signed and is stamped with the name [REDACTED], bilingual services at an address that differs from that on the letterhead. Thus, it is unclear as to the source that was relied upon in providing the information.

In this instance, the applicant has submitted several affidavits and third-party statements attesting to her continuous residence in the U.S. during the period in question. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits in the instant case are primarily from close friends and do not provide objective evidence of the applicant's presence and residency in the United States during the requisite period. Further, the affidavits lack sufficient detail and verifiable information to establish the applicant's presence in the United States by a preponderance of the evidence. Of particular note is the lack of information regarding the applicant's residence during the required period. The applicant failed to identify any address at which she resided from her initial entry into the United States through the required period, and none of the supporting statements indicate that she resided at a particular address. The single piece of contemporaneous evidence provided by the applicant is an envelope addressed to her at a post office box. Additionally, the applicant provided no independent objective evidence, such as canceled checks or similar documentary evidence, that she performed babysitting service for her acknowledged friends.

Given the minimum contemporaneous documentation and the vagueness of the evidence presented, it is concluded that the applicant has failed to meet her burden of proof to establish continuous residence in the U.S. for the required period by a preponderance of the evidence.

Furthermore, the applicant indicated on her Form G-325, Biographic Information, which she signed under penalty of perjury on March 22, 2001, that she gave birth to a daughter on July 22, 1981 and a son on December 25, 1984 in Mexico. During her June 17, 2003 interview, the applicant stated that she was absent from the United States from November 1984 to March 1985 for a period of four months because she was pregnant. While not dealt with in the district director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged absence from the United States was due to an "emergent reason." The regulation at 8 C.F.R. § 245a.15(c)(1) provides:

Continuous residence. 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. [Emphasis added.]

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." In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. The record contains no explanation or evidence that the applicant's four to five month absence from the United States was due to emergent reasons.

Accordingly, the applicant's four-month stay in Mexico during 1984 and 1985 interrupted any period of "continuous residence" in the United States. For this additional reason, the application must be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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