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U.S. Citizenship
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Services

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FILE:

MSC 01 304 60469

Office: LOS ANGELES

Date:

FEB 27 2007

IN RE:

Applicant:

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. Wienfann, 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 determined that 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, as required by Section 1104(c)(2)(B) of the LIFE Act. The director also determined that the applicant was likely to become a public charge as defined at 8 C.F.R. § 245a.18(c)(2)(vi). Based upon these determinations, the director concluded that the applicant was ineligible to adjust to permanent residences under the provisions of the LIFE Act and therefore denied the application.

On appeal, counsel states that the applicant has worked since she came to the United States and has a "sufficient history of verifiable income." Counsel submits a brief and additional documentation in support of the appeal. Counsel did not address the director's determination that the applicant had not established continuous residence in the United States during the qualifying period.

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).

On a form to determine class membership, the applicant stated that she entered the United States without inspection on October 2, 1981. On her Form I-687, Application for Status as a Temporary Resident, the applicant claimed that she used the alias [REDACTED]. However, she submitted no documentation to corroborate her use of that name. The applicant also stated that she lived at the following addresses during the qualifying period:

November 1981 to December 1985
January 1986 to December 1987
January 1988 to November 1990

[REDACTED]

The applicant also stated on her Form I-687 application that she worked for [REDACTED] as a live-in babysitter and housekeeper at the above stated [REDACTED] address from November 1981 to December 1985; for [REDACTED] as a part-time "house-helper" at the above stated [REDACTED] Avenue from January 1986 to December 1987; and at AT in Long Beach from March 1988 to December 1989.

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

1. An October 12, 1990 affidavit from [REDACTED] in which she stated that the applicant worked for her as a babysitter and did light housekeeping from November 1981 to 1985.
2. A January 19, 1991 affidavit from [REDACTED], in which she stated that she met the applicant at a Christmas Mass and that they have built a long friendship. [REDACTED] stated that, to her personal knowledge, the applicant lived at the above stated addresses during the time frames indicated. Ms. [REDACTED] did not state in her affidavit that the applicant worked for her or lived with her in 1986 and 1987.
3. A January 22, 1991 affidavit from [REDACTED] in which he stated that he was an apartment owner, and that the applicant had been one of his tenants from "that date mentioned above." The affiant stated that the applicant lived at [REDACTED] from December 1981 to December 1990. This statement conflicts with the statement of the applicant on her Form I-687 application, in which she stated that she lived with [REDACTED] at [REDACTED] from November 1981 to December 1985, and at [REDACTED] from January 1986 to December 1987. The applicant submitted no documentary evidence to corroborate her residency at either of the addresses claimed. 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).
4. A December 31, 1990 affidavit from [REDACTED], in which she stated that the applicant had lived in Long Beach, California since October 1981, and that she had known the applicant since that time because they lived in the same apartment building. [REDACTED] identified her address as [REDACTED]. We note that the applicant stated that she lived on [REDACTED] beginning in November 1988. [REDACTED] did not identify the apartment building in which she lived with and first met the applicant. Further, the applicant stated that she lived in the cities of Carson and Paramount in California during the qualifying period rather than in Long Beach. *Id.*

5. A January 4, 1991 affidavit from [REDACTED] in which he stated that he had personal knowledge that the applicant had resided in the United States since October 1981. However, Mr. [REDACTED] did not explain the source of his knowledge regarding the applicant's initial entry into the United States. Further, [REDACTED] alleged that the applicant had resided in Long Beach during the entire period that he had known her; however, the applicant claimed that she lived in Carson and Paramount from 1981 to 1988. *Id.*
6. A January 19, 1991 affidavit from [REDACTED], in which she stated that the applicant had lived in Long Beach since January 1981, and that they met at that time when they attended the same school to study English. This information conflicts with the statement of the applicant, who stated that she first arrived in the United States in October 1981. *Id.*
7. A June 21, 2001 affidavit from [REDACTED], in which she stated that she met the applicant in April 1982 at the temple where the affiant assists.
8. Copies of rental receipts dated January 1, 1982; September 1985; and July 1988. These receipts indicate the applicant's address at [REDACTED] and were all signed by [REDACTED]. These documents are suspect because the applicant did not, at any time, state that she lived at [REDACTED] Street and contradicts [REDACTED] statement that she first met the applicant in April 1982. It also conflicts with the statement of [REDACTED], in which he stated that he rented an apartment to the applicant at [REDACTED] from December 1981 to 1990. The statement also is inconsistent with that of the applicant, in which she states that she lived at [REDACTED], [REDACTED] and [REDACTED] during these periods. The applicant submitted no evidence to resolve this inconsistency. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. at 591.

In her letter accompanying the applicant's response to the director's Notice of Intent to Deny dated December 17, 2004, counsel stated, "When requesting documents over twenty (20 years old) the USCIS must realize that a lot of physical evidence is either lost or destroyed. With that, we must look to the credible testimony of the applicant in combination of any physical proof and/or affidavits of persons knowing the applicant." However, given the unresolved inconsistencies in the statements of the applicant and those providing statements and affidavits on her behalf, we cannot conclude that credible testimony of the applicant's continued residency and physical presence in the United States during the qualifying period was submitted. Accordingly, the applicant has failed to establish continuous residence in the United States for the required period.

The director also determined that the applicant was ineligible for benefits under the LIFE Act as she was likely to become a public charge.

On her Form G-325A, Biographic Information, which she signed under penalty of perjury on June 23, 2001, the applicant did not list any employment during the past five years, as required by the form. Instead, the applicant stated that she had been a "housewife" since 1993, while also indicating that she had never been married. The applicant stated during her LIFE Act adjustment interview on April 1, 2003, that she worked as a babysitter from 1980 until 1993 and was paid in cash. The applicant also stated that she began receiving checks in 1993 and filed her first income tax return in 2001. The applicant also stated that she was the mother of two children born in the United States, one in 1993 and the other in 2000, and that she had been receiving public assistance since 1993.

In response to the Notice of Intent to Deny (NOID) issued on November 15, 2004, the applicant submitted a sworn "Letter of Acknowledgement" in which she stated that she received aid for families with dependent children (AFDC) from 1993 until April 30, 2003 for her daughter, and that her daughter was currently receiving medial benefits. The applicant submitted no documentation to corroborate her receipt of any financial assistance for the support of her eldest daughter. The applicant submitted what appears to be check stubs from the County of Los Angeles, indicating that they are payments for child support collected from an obligor named Castaneda. According to counsel on appeal, these payments are for the applicant's younger daughter; however, nothing in these documents indicates a payee. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant also submitted copies of Forms W-2 for the years 1993, 1994, 1995 and 1997 from A&A Sportswear, Inc. issued to [REDACTED], and reflecting wages of approximately \$1,776, \$9,148, \$9,859, and \$4,837, respectively. The Forms W-2 reflect a social security number of [REDACTED] for [REDACTED]. The applicant also submitted copies of Forms W-2 from A&A Sportswear issued in her name for 1997 and 1998, reflecting a social security number of [REDACTED] and wages of \$3,877 and \$12,635, respectively. The record includes copies of Forms W-2 issued to the applicant in 1999 from M and M Fashions, Inc. for \$2,991.75 and Three G's; in 2001 from [REDACTED] for \$2,847 and Pacpro Management for \$5,787.51; in 2003 from America Textile Corporation for \$5,719 and Kandar Industries, Inc. for \$3,930.01; and a Form 1099G, Certain Government Payments, indicating that the applicant received \$72 in unemployment compensation in 2003. The record contains an undated letter from [REDACTED], executive vice president of KWB/Calco Manufacturing Company, in which he stated that the company had employed [REDACTED], with social security number [REDACTED] since June 4, 1990. A December 10, 2004 letter signed by [REDACTED], who identifies herself as the general manager, indicated that the applicant had worked for MNM Jeans since May 21, 2004.

Also submitted were copies of Forms 1040A, U.S. Individual Income Tax Return, for 1994 and 1995 in the name of [REDACTED] and showing the applicant's daughter as a dependent. A 1997 Form 1040A in the applicant's name shows a son as the only dependent. The applicant did not claim to have a son on any other document that she submitted. The applicant also submitted copies of her Forms 1040A for 2001 and 2003. Nothing in the record reflects that any of the tax returns were ever filed with the Internal Revenue Service.

The tax documentation (Forms W-2 and Forms 1040A) submitted by the applicant lack credibility. While we accept that the applicant's name may have been inadvertently altered to [REDACTED] we note that the applicant submitted no documentation to corroborate her claim that she used the name [REDACTED] or that she was also known by the name [REDACTED]. We note further that the applicant's sister's name is [REDACTED], which raises questions as to whom the Forms W-2 actually belongs. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. at 591.

Given the questionable documentation in the record, it is concluded that the applicant has failed to establish that she will not likely become a public charge. The applicant has not established by credible evidence that she has had a consistent employment history. An examination of the applicant's financial responsibility, as established by the record, indicates that it is likely that the applicant will become a public charge. Therefore,

she is inadmissible into the United States pursuant to section 212(a)(4) of the LIFE Act; 8 U.S.C. § 1182(a)(4).

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.