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FILE: [REDACTED] Office: NEW YORK Date: JUL 26 2007

MSC 02 027 61157

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, New York, New York, 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 not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel claimed that the applicant had not received any request for additional evidence since her interview on January 12, 2004. Counsel asserted that the applicant entered the United States prior to January 1, 1981 and has resided since such date through May 4, 1988. Counsel requested that either the director's decision be rescinded and the applicant be re-interviewed or the applicant be provided the opportunity to provide additional documentation. Counsel asserted that a brief and/or evidence would be submitted to the AAO within 30 days.

On April 30, 2007, the AAO sent a copy of the Notice of Intent to Deny dated February 6, 2004, that was issued by the district director to counsel's address of record. Counsel was informed that the district director, in her Notice of Decision, inadvertently indicated that the Notice of Intent to Deny was sent on October 6, 2002. Counsel was also informed that, to date, neither a brief nor additional evidence had been received by the AAO.

In response, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides of additional documents along with previously submitted documents 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. 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 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 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 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- Two receipts dated October 25, 1984 and June 25, 1985 from Green Acres Opticians, Inc. in Long Island, New York.
- An undated letter from [REDACTED] who indicated that the applicant has been a member of Islamic Federation of America Inc., in Bronx, New York since 1981. The affiant asserted that the applicant “is residing in Florida, but she still takes an active interest whenever she can in the activities of this Organisation [sic].”
- A letter dated June 1, 1990, from [REDACTED] of Queen, New York, who indicated to have known the applicant since September 1981. The affiant asserted to have first met the applicant while shopping in Manhattan and has remained friends with the applicant.
- A notarized affidavit dated July 5, 1990, from [REDACTED] of Long Island, New York, who indicated that the applicant resided in her home from July 1980 to March 1989. The affiant asserted that the applicant was employed as a babysitter of her son and to take care of her terminally ill mother. The affiant asserted that the applicant’s salary included meals and room and board and the applicant “left New York and my home in March 1989 after my mother’s death, to go and live in Florida.”
- A notarized affidavit dated July 5, 1990, from [REDACTED] of Long Island, NY, who attested to the applicant’s residence and employment with her niece, [REDACTED] from July 1980 to March 1989.
- An affidavit notarized September 28, 2001 from [REDACTED] of Las Vegas, Nevada, who indicated she has known the applicant for over 15 years and met the applicant in New York. The affiant asserted that the applicant visited and spent time with her in Las Vegas.
- An affidavit notarized September 5, 2001, from [REDACTED] of Las Vegas, Nevada, who indicated he has known the applicant for over 20 years and met the applicant in New York. The affiant asserted that he remained friends with the applicant even after relocating to Las Vegas and that the applicant has visited him “when I came out of the Air Force.”

At the time the applicant filed her LIFE application, she provided a statement indicating that she has resided in the United States since 1980, and has resided at [REDACTED] Brooklyn, New York since the early 1980’s. The applicant claimed that she shared the apartment with a friend whose name appeared on the lease agreement. The applicant asserted that she would provide proof of her residence at this location.

According to the interviewing officer’s notes, the applicant entered the United States by truck from Mexico and traveled with a family friend to Fort Lauderdale, Florida where she resided for approximately two months and engaged in housecleaning for friends. The applicant came to New York with the Singh

family, but did not have any permanent residence and resided from place to place until 1986. Employed as a housekeeper for several individuals until 1986. In 1985 traveled to Las Vegas and resided with [REDACTED] and other families ([REDACTED] for approximately six months. The applicant indicated that she was related to [REDACTED]. The applicant went to Florida for one month and resided with her brother. The applicant returned to New York in 1986 and resided in [REDACTED].

The director in her Notice of Intent to Deny dated February 6, 2004, advised the applicant that her testimony, at the time of her interview, was at variance with the information initially provided on her Form I-687 application, thereby casting credibility issues on her claim to have continuously resided in the United States in an unlawful status during the requisite period. First, the applicant indicated on her Form I-687 to have departed the United States to Canada for a funeral from June 1984 to July 1984, and for an unspecified emergency from November 1987 to December 1987. However, the applicant indicated that she departed only once; in 1982 or 1986. When asked again how many times she departed the United States, the applicant stated she was sure it was only one trip to Canada for a week to visit her mother. Upon being confronted with this discrepancy, the applicant amended her statement to include two departures. Second, the applicant indicated that she resided in Las Vegas for no more than six months in 1985 and moved to Florida for one month. However, on her Form I-687 application, the applicant did not claim any residence in Las Vegas and claimed residence in Florida commencing in 1989. Third, the Tina [REDACTED] indicated that the applicant resided with her from July 1980 until March 1989 and the applicant took care of her terminally ill mother. The applicant, however, asserted that she was employed as a housekeeper for [REDACTED] and neither resided with the affiant or took care of her mother.

Counsel, in response, to the AAO's letter submitted an affidavit from the applicant, which she asserts that the discrepancies mentioned above "were the result of nervousness at the interview and my ill health." The applicant provides an explanation for the each discrepancy.

Regarding her absences, the applicant asserts that she did leave the United States as indicated on the Form I-687. The applicant asserts that she first departed the United States to Canada for the funeral of her uncle, [REDACTED] at the latter part of June 1984 and she returned mid July 1984. Her second trip to Canada occurred the day after Thanksgiving 1987 and she returned to the U.S. in mid December. The purpose of her trip was to see her mother who had traveled from Guyana to receive medical treatment.

Regarding her residences, the applicant asserts that she resided in Las Vegas, Nevada in 1985 for less than six months with an acquaintance, [REDACTED]. The applicant asserts, in part:

This information should be added to the I-687 form, although I do not consider this a permanent residence as I went to Las Vegas in search of suitable employment. As I did not find employment I left Las Vegas and returned to New York to again live with my cousin [REDACTED]. At the time my possessions were contained in a single shopping bag and thus I did not consider any location my home. After my return from Las Vegas I resumed work with [REDACTED] as a domestic and companion for her ill mother.

The information contained in the affidavit submitted by [REDACTED] is correct. I did work for her from July, 1980 through March of 1989 when I went to Florida to find work. During the time that I worked for [REDACTED], I did leave to find better opportunity in Las Vegas in 1985 for approximately six months. I did act as a companion for [REDACTED]'s sick mother and I also cared for her baby and cleaned her house. During the interview in January, 2004 I was not sure what [REDACTED] had indicated in her affidavit and became very nervous

during the interview that I would cause trouble for her. I would stay at her home if the job demanded it and other times I would stay at my apartment in Brooklyn.

The applicant asserts that due to her illegal immigration status, she has only affidavits from affiants, two receipts dated October 1984 and June 1985 from an optician, and a 1985 renewal stamp in her Guyanese passport to establish her presence in the United States.

Counsel submits:

- A letter dated May 29, 2007 from [REDACTED] a medical doctor at Downstate Medical Center in Brooklyn, New York, who indicated that the applicant is a patient and will be undergoing an operative procedure in early July.
- Copies of the receipts from Green Acres Opticians, Inc. that were previously provided.
- A copy of her replacement Guyanese passport issued on September 4, 1997, issued by the Guyanese Consulate in New York.
- A copy of her GED diploma dated July 12, 1990.

Counsel and the applicant's claims that the passport was issued on September 5, 1985, in New York are in error. A review of the passport clearly indicates that it was being "issued in replacement of passport no. [REDACTED] issued at Guyana on 1985-09-05." The passport was renewed by the Guyanese Consulate in New York on September 4, 1997.

The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant resided in the United States from during the requisite period as contradicting information has been provided. Specifically:

1. The applicant claimed to have resided at [REDACTED] Brooklyn, New York during the requisite period. However, the applicant: a) did not claim this residence on her Form I-687 application; b) did not provide evidence from "the friend" that shared the apartment with her in effort to corroborate her statement; and c) indicated on her Form I-325A to have resided at this residence since June 1983.
2. The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests.
3. [REDACTED] indicated that she has known the applicant since September 1981, but failed to provide an address for the applicant or any details regarding the nature of their interaction in subsequent years.
4. [REDACTED] and [REDACTED] asserted to have known the applicant for over 15 and 20 years, respectively, but provide no address for the applicant. [REDACTED] failed to state the year and location the applicant visited him when he left the Air Force. Likewise, [REDACTED] failed to state the year the applicant visited her in Las Vegas.
5. The receipts and passport may serve only to establish the applicant's presence in the United States on October 25, 1984 and June 25, 1985.
6. [REDACTED] asserted that the applicant resided in her home from July 1980 to March 1989. [REDACTED] s affidavit does not corroborate the applicant's claim to have only stayed at the affiant's residence "if the job demanded it."

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant 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).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.