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**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC 02 214 60890

Office: DALLAS

Date:

SEP 10 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. 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, Dallas, Texas, 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 asserts that the director used a standard of proof that was more stringent than preponderance of the evidence. Counsel argues that no weight was given to any of the documents submitted and denial of the application was based on the finding that applicant did not reach the standard of proof as required by law. 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 copies of previously submitted documents along with additional 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:

- An affidavit notarized April 12, 1990, from a landlord, [REDACTED] of Anaheim, California, who indicated the applicant has been a tenant at [REDACTED] California since January 1985.
- An additional affidavit notarized April 10, 2002, from [REDACTED] who indicated his initial affidavit erroneously attested to the applicant's residence in Anaheim, California since January 1985. The affiant asserted the affidavit should have read the applicant resided at [REDACTED] 1989 to the present. The affiant indicated, "I think the notary took the liberty to put January 1985 and I really did not pay much attention to what she actually wrote out."
- A notarized affidavit from a landlord, [REDACTED] of Hawaiian Gardens, California, who indicated the applicant was a tenant at [REDACTED] California from November 1981 to June 1984.
- A notarized affidavit from [REDACTED] of Dallas, Texas, who indicated the applicant was in her employ as a housekeeper from March 1985 to September 1989.

On March 7, 2003, the applicant was issued a Form I-72 requesting she provide evidence to establish her presence in the United States during the requisite period. The record does not contain a response.

On May 8, 2004, the director issued a Notice of Intent to Deny, advising the applicant of her failure to respond to the Form I-72. The director noted that the record only contained "one landlord affidavit showing presence from 1982 to 1985." The applicant, in response, submitted:

- A notarized affidavit from [REDACTED] of Anaheim, California, who attested to the applicant's residence in the United States from February 1, 1982 through December 16, 1984. The affiant asserted that the applicant was in his employ as a chef for OK Catering during this time-period and that the applicant moved to Texas in December 1984.
- An additional affidavit from [REDACTED] who reaffirmed the applicant's employment as a housekeeper from March 1985 to September 1989. The affiant asserted the applicant also took care of her children.
- A letter dated April 11, 2003, from Father [REDACTED] pastor of St. Edward Catholic Community in Dallas, Texas, who indicated the applicant attended church from 1986 to 1988.

The director, in denying the application, noted that the applicant was 14 years of age at the time of her employment with [REDACTED], and that California State records did not show a company or LLP named OK Catering. The director further noted that [REDACTED] affidavit could not be verified. The director determined that the applicant had failed to provide credible and verifiable evidence of her presence in the United States during the requisite period.

On appeal, counsel asserted, in part:

After the initial packet of evidence was submitted [the applicant] supplemented her evidence with an affidavit from [REDACTED] who is her uncle and cared for her while she lived in California. [REDACTED] rented a mobile lunch catering truck from a company that used the

names "OK" and "Okeh" catering. That company was later purchased by TGI Catering who continues to use the d.b.a. Okeh or OK catering on their trucks. [REDACTED] continues to operate one of those catering trucks and while [REDACTED] was in California she would help prepare the meals and clean the truck. She did not attend school in the United States.

Counsel submits:

- Photographs of a catering truck bearing the names "OK" and "Okeh."
- A statement dated February 17, 2005 from Ismael [REDACTED] who indicates he is an independent driver with TGI Catering doing business as [REDACTED]. The affiant asserted he is self-employed and hires his own help and that the applicant's responsibilities while in his employ were cooking and cleaning.
- A notarized affidavit from [REDACTED] Dallas, Texas, who indicates she has known the applicant since 1986 and attested to the applicant's continuous residence in the United States.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. However, the evidence submitted does not establish with reasonable probability that the applicant was already in the country before January 1, 1982 and that she was residing in continuously unlawful status through May 4, 1988. Specifically:

1. The applicant did not claim employment with [REDACTED] on her Form I-687 application. In fact, no employment was claimed until 1985.
2. Counsel asserts that [REDACTED] was the applicant's uncle and cared for her while she lived in California. However, the affiant makes no mention of this issue in either affidavit that has been submitted. The affidavit from the affiant must be viewed as having a self-evident interest in the outcome of proceedings, rather than as an independent, objective and disinterested third party.
3. The letter from Father [REDACTED] 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 pastor does not explain the origin of the information to which he attests. It is noted that the applicant indicated on her Form I-687 application that she was *not* affiliated with any religious organization during the requisite period.
4. The applicant claimed on her Form I-687 application residence in California from November 1981 to June 1984 and in Dallas, Texas from March 1985 to September 1989. However, there is a significant period of time that has not been accounted for, namely July 1984 to February 1985.
5. The applicant claimed to have resided in Dallas, Texas from March 1985 to September 1989. However, except for the employment letter from [REDACTED] no evidence such as a lease agreement, rent receipts, utility bills or affidavits from affiants were submitted to corroborate this residence.
6. [REDACTED] attests to the applicant continuous residence in the United States since 1986, but provides no address for the applicant, and no details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence.
7. As the applicant was a minor, it is conceivable that she would have been residing with an adult during the period in question. The applicant's failure to provide the names of the individuals she

resided with along with an attestation from said individuals raises serious questions about the credibility of her claim and the authenticity of the affidavits submitted.

These factors raise significant issue to the legitimacy of the applicant's residence during the period in question.

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).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). 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.

Finally, while not the basis for the denial of the application or the dismissal of the appeal, it must be noted that the record reflects that on June 23, 2003, the applicant attempted to enter the United States at the San Ysidro port of entry by presenting a counterfeit Form I-551, Permanent Resident Card.¹ The applicant was found to be inadmissible under sections 212(a)(6)(C)(i) and (7)(A)(i)(I) of the Immigration and Nationality Act (the Act) and served with Form I-860, Notice and Order of Expedited Removal. The applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act. The fact that the applicant was removed under these sections of the Act, and then reentered without permission under section 212(a)(9) of the Act, renders her inadmissible. However, such grounds of inadmissibility may be waived pursuant to section 245A(d)(2) of the Act; 8.C.F.R. § 245a.18(c).

Given her failure to credibly establish continuous residence in the United States during the requisite period, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act, and therefore the issuance of an application for waiver of inadmissibility is moot.

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

¹ At the time of the applicant's attempt to enter the United States, she was given alien registration number [REDACTED]. Once it was apparent that the applicant had a prior A-file [REDACTED], all the documentation from [REDACTED] was consolidated into the Form I-485 application.