



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date: AUG 05 2008

MSC 02 228 60762

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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.

Handwritten signature of Robert P. Wiemann in black ink.

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 failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant reasserts that the applicant has established her continuous residence. The applicant submits additional evidence on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

In the Notice of Intent to Deny (NOID), dated April 29, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating her continuous unlawful residence in the United States during the requisite period. The director noted that although the applicant stated that she entered the United States on November 22, 1981: 1) the applicant submitted a Colombian identification card that was issued on December 11, 1982; 2) a Petition for Alien Relative, I-130, filed on behalf of the applicant by the applicant's spouse, indicates that the applicant entered the United States without inspection in November 1984; and, 3) that a Biographic Data Form, G-325A indicates that the applicant resided in Colombia from 1969 thorough October 1984. The director also noted that the applicant had submitted high school records in the United States from 1985 to 1988. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated October 4, 2006, the director noted that the applicant failed to respond to the NOID, and denied the instant application based on the reasons stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate her continuous residence in the United States in an unlawful status during the requisite period.

On appeal, counsel for the applicant alleges ineffective assistance of prior counsel. Counsel alleges that a former preparer erred in stating on a Form I-130 petition filed on behalf of the applicant, that the applicant entered the United States in 1984, and on the applicant's G-325A that accompanied the Form I-130, that the applicant resided in Colombia from 1969 until October 198. However, counsel does not submit any of the required documentation to support an appeal based on ineffective assistance of counsel.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, CIS is not responsible for action, or inaction, of the applicant's representative.

On appeal, in an attempt to establish continuous unlawful residence in the United States during the requisite period in this country since prior to January 1, 1982, the applicant submits a letter and eight

affidavits as evidence to support her Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible. The applicant submitted:

1. A sworn affidavit from the applicant's mother, [REDACTED], sworn to on August 8<sup>th</sup> 2006, [REDACTED] states that the applicant first entered the United States in November 1982, when she was 12 years old, and she was afraid to place the applicant in school for fear of her being deported; in November 1984 she departed the United States for Colombia, with the applicant, to care for a sick child in Colombia, and two weeks later she returned to the United States without inspection with the applicant; and, upon her re-entry she placed the applicant in school because she felt more confident that school would not be a risk.
2. A letter from [REDACTED] Director of Religious Education, Church of Our Lady of Fatima, located in Jackson Heights, New York, dated August 2, 2006. Ms. [REDACTED] states she has known the applicant "for the past years" and that the applicant teaches as a volunteer Catechist. However, [REDACTED] does not date her acquaintance with the applicant, or state how long she has known the applicant, how she dates her acquaintance with the applicant, and whether the applicant has been a continuous resident in the United States for any specific length of time.
3. A form affidavit from [REDACTED] sworn to on September 15, 1991, stating that the applicant rented a room from her from February 1984.
4. A form affidavit from [REDACTED], sworn to on September 15, 1991, stating that the applicant lived with her from November 1981 through December 1983.
5. A form affidavit from [REDACTED], sworn to on September 12, 1991, attesting to knowing the applicant resided in New York from November 1981. Mr. [REDACTED] also states that during the period there was only one day he did not see the applicant. Mr. [REDACTED] however, does not state how he dated his acquaintance with the applicant.
6. A form affidavit from [REDACTED], sworn to on September 13, 1991, attesting to knowing the applicant resided in New York from November 1981. Mr. [REDACTED] states that he and the applicant have been friends since 1982 and are drinking partners, and that during the period there were only five days he did not see the applicant.
7. A form affidavit from [REDACTED] sworn to on September 12, 1991, attesting to knowing the applicant resided in New York from November 1981. Ms. [REDACTED] states that she met the applicant at a friend's party, and since then she and the applicant have been best of friends. Ms. [REDACTED] also states that during the period there was only two days he did not see the applicant.

8. A form affidavit from [REDACTED] sworn to on September 15, 1991, stating that he accompanied the applicant to the airport. However, the affiant does not indicate a date when he accompanied the applicant to the airport, and does not indicate whether the applicant has been a continuous resident for any specific length of time.
9. A form affidavit from [REDACTED], sworn to on September 12, 1991, attesting to knowing the applicant resided in New York from November 1981. Ms. [REDACTED] states that she met the applicant when she first came to the country in 1981 and that she speaks to her often. Ms. [REDACTED] also states that during the period there was only one day she did not see the applicant. However, the affiant does not state how she dates her acquaintance with the applicant.

The applicant has submitted a letter and eight affidavits in support of her application, however, contrary to counsel's assertion, the evidence in the record is inconsistent and does not establish the applicant's continuous presence in the United States during the requisite period. Several of the affiants attest to the applicant's residence in the United States since November 1981, however, the record reflects that: the applicant submitted a Colombian identification card that was issued on December 11, 1982; a Petition for Alien Relative, I-130, filed on behalf of the applicant by the applicant's spouse, indicates that the applicant entered the United States without inspection in November 1984; and, a Biographic Data Form, G-325A, signed by the applicant and submitted in connection with the I-130 petition, indicates that the applicant resided in Colombia from 1969 thorough October 1984. Also, the record does not contain school records for the applicant except for high school records in the United States from 1985 to 1988. Counsel asserts that the identification card was issued in Colombia in the applicant's absence. Counsel, however, does not provide any documentation in support of this assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

Regarding the absence of school records for the period up to 1985, counsel submits a questionable affidavit from [REDACTED] the applicant's mother, stating that the applicant first entered the United States in November 1982, when she was 12 years old, but she was afraid to place the applicant in school for fear of her being deported. However, Ms. [REDACTED] claims that in November 1984 she departed the United States for Colombia, with the applicant, and returned two weeks later to the United States, without inspection, with the applicant. Then, upon her re-entry she placed the applicant in school because she felt more confident that school would not be a risk, but she does not explain the circumstances of how she would have felt confident to enroll the applicant in school after only two weeks away. Also, while Ms. [REDACTED] states that she went to care for her sick child in Colombia, there is no indication that the applicant's presence was necessary in Colombia. It is also noted that the record does not include elementary school records for the applicant, including records from Colombia. The applicant was 12 years old at the time of her claimed entry, yet there is no reliable documentation, such as school records, or immunization records to corroborate her claimed

residence from 1981 to 1985. Furthermore, the record reflects that on her Form I-687 application, signed by the applicant on May 7, 1991, the applicant states that she entered the United States on November 22, 1981, and she indicates only one absence from the United States, from January 10, 1988 to January 28, 1988, to visit her father. It is also noted although the applicant indicated that she had been absent from the United States for about two weeks, several of the affiants attest that there were only five or less days during this period when they did not see the applicant since 1981.

These discrepancies cast considerable doubt on whether the applicant resided in the United States since November 1981 as she claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that she continuously resided in the United States in an unlawful status during the requisite period.

The applicant has not provided any other evidence of residence in the United States for the period prior to 1985. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or describe the circumstances under which they saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant states only that she is unable to obtain evidence due to the passage of time. Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, she 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.