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[REDACTED]

FILE:

[REDACTED]

MSC 01 338 60998

Office: MIAMI

Date:

AUG 26 2008

IN RE: Applicant:

[REDACTED]

APPLICATION:

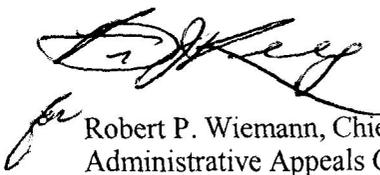
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


for 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 (director) in Miami, Florida. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988.

On appeal counsel asserts that the director did not properly consider the evidence in the record, consisting primarily of affidavits, which should be deemed sufficient to establish the applicant's claim of continuous unlawful residence in the United States since 1981.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *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.” (Emphases added.)

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 its amenability to verification. See 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of Colombia who claims to have lived in the United States since September 3, 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on September 3, 2001. At that time the record included the following evidence of the applicant’s residence in the United States during the 1980s, all of which had been filed in 1991:

- An affidavit by [REDACTED], a resident of Miami, Florida, dated May 13, 1991, stating that he is the applicant’s cousin and knows that the applicant had been living in the United States since 1981 and made a trip to Mexico to visit her ailing father from August 25, 1987 to September 30, 1987.

An affidavit by [REDACTED] a resident of Cali, Colombia, dated February 11, 1991, stating that the applicant is her daughter, left Colombia for the United States in 1981, and returned to Colombia in August 1987 for a one-month visit when her father was ill and dying.

An affidavit by [REDACTED], a resident of Miami Beach, Florida, dated May 3, 1991, stating that the applicant came to live with her at [REDACTED], in September 1981, and continued to live with her, paying rent of \$60/month, until October 1987. Ms. [REDACTED] stated that the applicant worked outside the house as a baby sitter and cleaning homes.

- An affidavit by [REDACTED], a resident of North Miami Beach, Florida, dated April 5, 1991, stating that she met the applicant through a friend in 1981 and that the applicant lived in her house at [REDACTED] in North Miami Beach, Florida from November 1987 through September 1990, paying rent of \$100/month.

An affidavit signed illegibly by a resident of [REDACTED] in Miami, Florida, dated August 30, 1991, stating that the applicant worked for her as a housekeeper, twice a week at \$20/day, from January 1982 through December 1985.

A letter from [REDACTED], rector of Iglesia de la Santa Cruz (Holy Cross) in Miami, Florida, dated May 3, 1991, stating that he met the applicant in 1981 when she was living at [REDACTED] in Miami Beach and he was a pastor at Holy Comforter Church in Miami. Rev. [REDACTED] stated that the applicant was an active member of Holy Cross Church and that his knowledge of the applicant came from his personal knowledge, her attendance at the church, and her friends.

On August 6, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID, whereupon the director denied the application on September 10, 2007 on the ground that the applicant failed to establish that she entered the United States unlawfully before January 1, 1982, as claimed, and resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

The applicant filed a timely appeal, indicating that all available evidence had already been furnished and asserting that the affidavits/letters in the record should be accorded more weight.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. In accord with the director's decision, the AAO determines that she has not.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite time period for LIFE legalization. For someone claiming to have lived and worked in the United States since September 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

The various affidavits from individuals who claim to have known, lived with and/or employed the applicant during the 1980s provide little information about her life in the United States and their interaction with her over the years. Two of the affiants – [REDACTED] and [REDACTED] – refer primarily to the applicant's trip to Mexico in 1987 and do not explain how they know the applicant had been living in the United States since 1981. Two other affiants who claim to have housed the applicant during the 1980s – [REDACTED] and [REDACTED] – do not say how they met the applicant and offer only the barest of details about what else she was doing during those years. The affiant who claims to have employed the applicant as a twice-a-week housekeeper during the years 1982-1985 is unidentifiable because his (or her) signature is illegible and his (or her) name does not appear elsewhere on the document. Furthermore, none of the foregoing affidavits was accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have limited probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The letter from [REDACTED], rector of Holy Cross Church in Miami, Florida, does not comport with all of the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. Specifically, [REDACTED] does not indicate the applicant's dates of membership in his prior church, Holy Comforter, and his present church, Holy Cross. While indicating that the applicant attended Holy Comforter in 1981, he did not state for how long. Similarly, while indicating that the applicant was attending Holy Cross in 1991, he did not state when she began doing so. Thus, [REDACTED] did not show the applicant's inclusive dates of membership in his churches, as required by subsection (C) of 8 C.F.R. § 245a.2(d)(3)(v). In addition, [REDACTED] did not identify the applicant's address(es) during her membership periods in the two churches, stating only where she resided in 1981 and where she resided in 1991, without accounting for any of the years in between. Thus, the letter did not meet the requirements of subsection (D) of 8 C.F.R. § 245a.2(d)(3)(v). Because [REDACTED] is so vague about the applicant's place of residence and connection with his churches in the years following 1981 and the years before 1991, the AAO concludes that his letter has limited probative value. It is not persuasive evidence that the applicant maintained continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as

required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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