

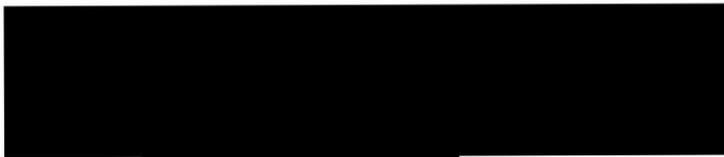
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 239 61961

Office: LOS ANGELES

Date: **AUG 29 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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

for
Robert P. Wiemann, Chief
Administrative Appeals Office

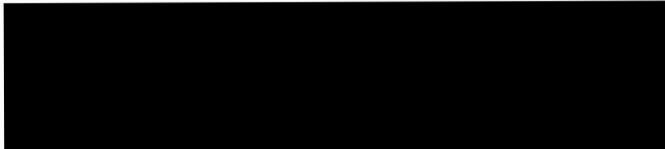
DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles. The director withdrew the denial via service motion, reopened the proceedings, and subsequently denied the application a second time. The application is now before the Administrative Appeals Office 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 since before January 1, 1982 through May 4, 1988. On appeal, the applicant contends that the director failed to consider the sufficiency of the evidence she submitted in rebuttal to the director's notice of intent to deny.

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 her form for determination of class membership, which she signed under penalty of perjury, the applicant claimed that she first entered the United States in November 1981 when she crossed the border without inspection at the age of three months. Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury February 22, 1990, the applicant claimed to have resided at the following addresses during the requisite period:

11/81 to 07/83:
07/83 to 02/84:
02/84 to 06/87:
06/87 to Present:



The applicant was a minor during the requisite period; therefore, no employment history was provided.

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

- (1) Translated copy of document from the National Directory of Historic & General Files, dated June 13, 2005, confirming that the applicant left Peru on July 31, 1983.
- (2) Photocopies of passports for the applicant's parents,  demonstrating that they entered the United States with valid B-2 visas on July 31, 1983. The passports also indicate that they were issued in Trujillo, Peru on July 6, 1983.
- (3) Immunization records for the applicant, provided by Glendale Health Center in Glendale, CA. The records covered the applicant's immunizations from 11/02/1981 through 08/20/1992. It is noted that next to several of the immunizations issued in 1981, 1982 and 1983, it merely states "copied from legal document" and does not state where and/or what doctor or facility provided the vaccinations.
- (4) Applicant's appointment card issued by the Olive View Medical Center in Los Angeles, evidencing the applicant's appointment on January 27, 1984.

- (5) Undated and unnotarized statement by [REDACTED] statement is in support of the applicant's father, [REDACTED] and states that the [REDACTED] had been in the United States since November 1981 and that he had worked for her as an apartment manager until November 1983. She did not state where the applicant's father allegedly worked nor did she provide any additional details regarding the nature of the alleged employment.
- (6) Letter dated June 14, 2005 from [REDACTED] on of [REDACTED] Mr. [REDACTED] claims that the purpose of his letter is to verify the information attested to by his mother in the undated document discussed above, since she had passed away since providing that statement. He claims that the applicant's father, [REDACTED] managed his mother's apartments located at [REDACTED] November 1981, and that [REDACTED] lived in the apartment complex with his wife, [REDACTED] and the applicant until November 1983.
- (7) Undated statement by [REDACTED], uncle of the applicant, claiming that he has personal knowledge that the applicant resided in the United States since November 1981. He confirmed the claimed address history provided by the applicant on Form I-687, and further claimed that the longest period during which he did not see the applicant during the requisite period was 10 days.
- (8) Undated statement by [REDACTED] friend of the family, claiming that he has personal knowledge that the applicant resided in the United States since November 1981. He confirmed the claimed address history provided by the applicant on Form I-687, and further claimed that the longest period during which he did not see the applicant during the requisite period was 1 month. He claimed that he attended Sunday church services with the family.
- (9) Letter from applicant dated May 20, 2002, in which she states that she arrived in the United States in November of 1981 with her parents. She claims that she departed the United States only once prior to 1988, namely, in July 1983, in order to return to the United States with a visa. This statement directly contradicts her claims on Form I-687 and on the form for determination for class membership, where she claimed that she visited Peru for one month in July 1987.
- (10) Utility bills in the name of the applicant's father, [REDACTED] dated October 14, 1983; September 27, 1984; March 4, 1985; July 1, 1986; April 30, 1987; March 2, 1988.
- (11) Medical bill for the applicant dated March 25, 1985 from Burbank Emergency Medical Group, for services rendered on 11/25/84.

On November 3, 2005, CIS issued a Notice of Intent to Deny the application. The district director noted that despite the applicant's claim that she continually resided in the United States since before January 1, 1982, the record did not contain credible evidence to support a finding that the applicant was continually present from 1982 through 1988. The district director noted that the veracity of the applicant's immunization records was questionable, and further noted that the applicant's claims regarding her trips outside the United States were conflicting. Finally, the director called into question the applicant's alleged departure from the United States in July 1983 and noted that it did not seem plausible in light of

the statements provided by his former employers. The applicant was afforded an opportunity to respond to this notice and submit additional evidence to overcome the basis for the director's objections.

In a response dated December 3, 2005, former counsel for the applicant submitted the following evidence:

- (1) Letter dated November 11, 2005 by the Trujillo, Peru Lions Club, claiming that the applicant's father, a member, and his wife departed Peru in 1981 to reside "overseas."
- (2) Letter dated November 18, 2005 from [REDACTED] Church in Reseda, California, confirming that the applicant and her family were unregistered members of the parish for many years, and that the applicant and her younger brother received their elementary educations in the parish.
- (3) Letter dated December 1, 2005 by [REDACTED] claiming that he has known the applicant and her family since November 1981. He claims that he and the applicant's father [REDACTED] worked together as construction handymen for [REDACTED] from November 1981 to September 1982. This contradicts the claims of [REDACTED] who claim that [REDACTED] was their apartment manager
- (4) Certification dated November 16, 2005 by [REDACTED] President of the Cameras of Commerce of the National Red of Peru, stating that the applicant's parents worked for his company, Industrial Leon S.R.I. Ltda. He claims that after resigning in October 1981, he purchased their airline tickets, as well as the ticket of the applicant, to Mexico on Aero Peru as a sign of his gratitude. He claims he has no documentary evidence of this purchase since the airline is no longer in business.

The director did not consider the evidence submitted by counsel prior to rendering the denial on December 15, 2005. On service motion on January 25, 2006, the director reopened the proceedings to consider the evidence that was timely submitted by counsel in response to the NOID. The director found the documentation unpersuasive, and denied the application for a second time on January 28, 2006. On appeal, the applicant contends that the director never considered this documentation, and requests reconsideration by the AAO. No new evidence is submitted on appeal.

The issue on appeal is whether the applicant has 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 8 C.F.R. § 245a.11(b).

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 or 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.

The AAO concurs with the director's findings. The affidavits upon which the applicant relies contain very little detail and some inconsistencies that have not been reconciled. The AAO will first address the applicant's claims of residence during the requisite period.

The applicant claims that she entered the United States in November 1981 when she was three months old. She likewise contends that she flew from Peru to Mexico, where she crossed the border without inspection. She further claims that she returned to Peru in July 1983 with her parents in order to return to the United States legally with a visa. Her parents' passports, and a certificate from the Peruvian government, demonstrate that they entered the United States on July 31, 1983.

On Form I-687 and on the form for determination of class membership, both of which she signed under penalty of perjury, the applicant claimed that she entered the United States in November 1981, and only left the United States on one occasion, namely, in July of 1987 to visit Peru. These claims, both made under oath, contradict the claims of the applicant in her May 20, 2002 letter to the service, where she claims she returned to Peru in July 1983.

Additionally, it is noted that the passports of her parents were issued in Trujillo, Peru on July 6, 1983. Based on this fact, it stands to reason that the applicant's parents were in Peru as of that date, since no allegation has been made to imply that these passports were retrieved by family members. Since the applicant would have been less than two years old at the time, it likewise stands to reason that she was also in Peru at this time. Therefore, the first problem with these claims lies in the conflicting statements provided by the applicant. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Second, it is unclear how the applicant and her parents allegedly traveled between Peru and Mexico in November 1981, and again from the United States to Peru, if they did not have valid passports. The record indicates that the applicant's parents were issued passports on July 6, 1983 in Peru. Since they allege that they traveled by air to Mexico in November 1981 before crossing the border, it would be presumed that they must have possessed valid travel documents to exit South America and enter Mexico. Likewise, it is unclear how they returned to Peru without once again partaking in air travel, again raising the question as to why no further evidence of their arrival in Mexico in November 1981 and subsequent return to Peru in July 1983 is submitted. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also*

Anetekhai v. I.N.S., 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Based on the lack of documentation for travel that certainly must have been documented at the time, it appears more likely than not that the applicant and her parents first arrived in the United States in July 1983, as evidenced by the arrival records. The applicant submits copies of vaccination records in an attempt to demonstrate that she was vaccinated in the United States as early as November 1981 and therefore was present prior to January 1, 1982 as required. However, a review of the vaccination records, prepared by Glendale Health, indicates that the applicant's vaccination records for 1981, 1982 and 1983 were copied from an unidentified legal document, most likely the applicant's medical records from Peru. Since there is no independent seal or signature next to these early entries signifying that they were administered in the United States, the AAO finds the vaccination records insufficient to establish eligibility in this matter. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

A few errors or minor discrepancies are not reason to question the credibility of an alien seeking immigration benefits. See, e.g., *Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. As previously stated, doubt cast on any aspect of the applicant's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established her eligibility in this matter.

The above negative factors would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his or her knowledge for the testimony provided.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely

entirely on affidavits which are considerably lacking in such basic and necessary information. The affidavits and letters submitted in support of this application fall far short of meeting the above criteria for the reasons outlined above. The number of unreconciled inconsistencies, coupled with the minimal information provided, is of little probative value to the AAO for purposes of this appeal.

For example, the statements from [REDACTED] claim that the applicant's father worked for them as an apartment manager from November 1981 to September 1983. However, they provide no additional details regarding this alleged employment, such as the name of the apartment complex he allegedly managed, his salary, his job duties, or periods of layoff. This last point is important, since according to the applicant, he left the United States in July 1983 for an unspecified period of time, yet continued to work for the [REDACTED] family until September 1983. Finally, letters from employers, when used to demonstrate residency, should 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). Additionally, the statement by [REDACTED] dated December 1, 2005 claims that the applicant's father was a construction handyman, and makes no reference to a position as a apartment manager. As previously stated, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

It should be noted, however, that even if the applicant's father's employment was demonstrated, the issue in these proceedings is whether the applicant was present in the United States during the requisite period. These statements provide little or no detail with regard to the applicant and her continuous unlawful residence during the requisite period.

The applicant also submits a letter from [REDACTED] of Siena Church in Reseda, California. Pursuant to 8 C.F.R. § 245a(4)(iv)(E), attestations by churches, unions, or other organizations as to the applicant's residence by letter are considered acceptable if they:

- (1) Identify applicant by name;
- (2) Are signed by an official (whose title is shown);
- (3) Show inclusive dates of membership;
- (4) State the address where applicant resided during membership period;
- (5) Include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
- (6) Establish how the author knows the applicant; and
- (7) Establish the origin of the information being attested to.

Although [REDACTED] claims that the applicant received her education and sacraments at the church, he likewise claims that the applicant was an *unregistered* member of the parish. Therefore, he fails to provide her inclusive dates of membership. He further contends that she received her sacraments and her elementary education in the parish, yet fails to state the origin of this information. If in fact the applicant received sacraments such as baptism in the parish, which undoubtedly would have been administered when she was an infant, more persuasive evidence of her continuous unlawful residence would consist of a baptismal certificate, or other sacramental and school records such as report cards. The applicant failed to provide any such documentation.¹

Given the numerous inconsistencies in the record, the absence of verifiable documentation and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that she continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Therefore, 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.

¹ The AAO notes that the record contains a high school diploma and certificates of achievement from the year 2000, as well as an elementary school diploma issued in 1995. These documents indicate her presence in the country after the expiration of the requisite period and are therefore not relevant.