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U.S. Citizenship
and Immigration
Services

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FILE: MSC 02 184 61628

Office: BOSTON

Date: FEB 13 2008

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. 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.

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, Boston, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

On appeal, counsel asserts that the director's decision is erroneous as a matter of discretion and law. Counsel indicated that a brief and/or evidence would be submitted to the Administrative Appeals Office (AAO) within 30 days of receipt of the Record of Proceedings (ROP). The record reflects that the ROP was sent to counsel in September 2006. On September 18, 2007, counsel indicated that he did not submit a brief or evidence in support of this appeal as he noted on the applicant's Form I-290B.

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.* at 80. 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, 431 (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 February 21, 2004, the director stated that the applicant failed to submit sufficient evidence to establish her claimed entry into the United States before January 1, 1982, continuous unlawful presence since such date through May 4, 1988, and continuous physical presence from November 6, 1986, to May 4, 1988. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence.

On March 18, 2004, counsel submitted additional evidence in support of the applicant's claim. In the Notice of Decision, dated March 5, 2005, the director determined that the additional evidence failed to substantiate the applicant's claim and denied the instant application.

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 continuously resided in an unlawful status since January 1, 1982, through May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act on November 27, 1990. At Question 16, the applicant stated that she last came to the United States on November 15, 1981. The applicant confirmed this date of entry in her Form for Determination of Class Membership in *CSS v. Meese*, dated November 27, 1990. She stated that she first entered the United States on November 15, 1982.

She also included the following evidence in support of her Form I-687 application.

1. A December 9, 2003, sworn and subscribed affidavit by _____ who stated that the applicant resided with her at _____ in New York, New Jersey, from January 1, 1982 to June 1, 1985. The affiant provided her telephone number.
2. An April 1, 1990, notarized declaration by _____ who stated that the applicant left the United States on January 17, 1988 to visit her family in Peru because her father died. The applicant returned on February 15, 1988.
3. Three similar affidavits by _____ and _____ who all stated that the applicant resided in the United States from November 1981 to the present. The affiants provided their addresses of residence. The affiants stated that the applicant resided at the following addresses:

- a. [REDACTED] in Union City from November 1981 to December 1986
 - b. [REDACTED] Elmhurst, NY 11373 from January 1987 to April 1990
 - c. [REDACTED], Corona, NY 11368 from May 1990 to December 1990
 - d. [REDACTED], Corona, NY 11368 from January 1990 to the present
4. A March 28, 1991, letter by [REDACTED], warehouse manager of HESCO Environmental Safety Co., Inc., who stated that the applicant had been employed by the company from October 30, 1986, through the present time as an asbestos handler. The applicant also attached W-2 Wage and Tax Statements from the company for 1986, 1987 and 1989.
 5. An undated letter by [REDACTED], of Calima Cafeterias, who stated that the applicant had worked as a cook-helper from January 1982 to September 1986.
 6. A February 15, 1990, letter by Most Rvd. [REDACTED] Bishop of St. Brigid's Parish, who stated that the applicant has been a member of the parish since 1981 and comes regularly for services.
 7. An undated letter by [REDACTED], manager of ITP Travel Ltd., who certified that their archive of sales record indicated the applicant purchased a one way Eastern Airlines New York-Lima, Peru, ticket for travel on January 17, 1988.

In connection with the instant application, the applicant submitted the following evidence.

- a. A photocopy of a March 10, 2004, sworn and subscribed affidavit by [REDACTED] who stated that the applicant lived with her at [REDACTED] North Bergen, New Jersey, from March 1981 to August 1981. The affiant helped the applicant with room and food. The applicant moved to [REDACTED], Union City, New Jersey after August 1981. The affiant provided her address of residence, telephone number and certificate of naturalization. The affiant also provided a second affidavit, dated March 29, 2005. The affiant reaffirmed her previous statements.
- b. A photocopy of a March 8, 2004, sworn and subscribed affidavit by [REDACTED] who stated that she has **known the applicant** since January 1984. The affiant stated that **the applicant** resided at [REDACTED] Stamford, Connecticut, and used to live at [REDACTED] Union City, New Jersey. The affiant provided her address of residence and certificate of naturalization.
- c. A photocopy of a March 5, 2004, sworn and subscribed affidavit by [REDACTED] who stated that he has **known the applicant** since July 1981 to the present. The affiant stated that the applicant resided at [REDACTED] Stamford, Connecticut. The affiant provided her address of residence and certificate of naturalization. The affiant also provided a March 29, 2005, declaration. He stated that the applicant worked at the candy store in front of his work, [REDACTED]

- d. Three affidavits by [REDACTED] and [REDACTED]. These affidavits are written in Spanish and the record does not contain English translations as required in the regulation at 8 C.F.R. § 103.2(b)(3).
- e. A March 29, 2005, declaration by [REDACTED] who stated that he found out that the applicant entered the United States through his parents. The applicant later communicated with the affiant via telephone. The affiant stated that it was in March 1981 when his parents told him and he described his thoughts about the applicant's decision to go to the United States. The affiant provided a photocopy of his Republic of Peru passport and national identification document, and a photocopy of his U.S. visa.
- f. A March 29, 2005, declaration by [REDACTED] who stated that she found out that the applicant entered the United States through telephone communications. The affiant described her memories during the time period when the applicant decided to leave Peru and the past few years. The affiant provided a photocopy of her Republic of Peru passport and national identification document, and a photocopy of her U.S. visa.
- g. A March 29, 2005, declaration by [REDACTED] who stated that she is the mother of the applicant. The affiant described her memories during the time period when the applicant decided to leave Peru in 1981. The affiant provided a photocopy of her Republic of Peru passport and national identification document, and a photocopy of her U.S. visa.
- h. A March 29, 2005, declaration by [REDACTED] who stated that she is the applicant's sister. The affiant stated that she communicated with the applicant via the neighbor's phone from 1982 to May of 1988. The affiant described her memories during the time period when the applicant decided to leave Peru and the past few years. The affiant provided a photocopy of his Republic of Peru passport and national identification document, and a photocopy of his U.S. visa.
- i. A March 29, 2005, declaration by [REDACTED], who stated that he is the applicant's nephew. The affiant found out that the applicant entered the United States in May 1981 through his grandparents. The affiant was approximately eleven years old in 1981. The affiant described his memories during the time period when the applicant decided to leave Peru and the past few years. The affiant provided a photocopy of his permanent resident card and social security card.
- j. A March 29, 2005, declaration by [REDACTED], who stated that he is the applicant's nephew. The affiant found out that the applicant entered the United States through his mother and grandmother. The affiant was approximately twelve years old. The affiant described his memories during the time period when the applicant decided to leave Peru and the following years. The affiant provided a photocopy of his Republic of Peru passport, Connecticut driver's license, and U.S. passport.
- k. An undated notarized declaration by [REDACTED] who stated that the applicant was a good friend of her neighbor. The affiant found out that the applicant entered the United

States through her neighbor. The affiant was approximately eleven years old and a student at the time. The affiant stated that her neighbor would comment about the applicant going on a trip and that the applicant lived somewhere in New Jersey. The affiant later married the applicant's nephew. The affiant provided a photocopy of her U.S. passport.

- l. An undated notarized declaration by [REDACTED] who stated that the applicant is his aunt. The affiant found out that the applicant entered the United States through his family. The affiant was approximately seven years old and a student at the time. The affiant stated that his family always kept in touch and talked on the telephone for birthdays and holidays. The affiant provided a photocopy of his Republic of Peru passport and U.S. permanent resident card.
- m. Medical records and medical receipts in the applicant's name indicating that she was in the United States in 1985.
- n. A March 25, 2005, letter by [REDACTED] general president of Laborers' International Union of North America, who stated that the applicant initiated into the Local Union 104 in New York on October 30, 1987. The applicant also provided a photocopy of her membership card which indicates the same initiation.

While the above affidavits corroborate the applicant's claim that she entered the United States in 1981, it is noted that seven of the fifteen affidavits are from the applicant's family members. Six of the seven affiants do not have first-hand knowledge that the applicant entered in 1981. Rather, they stated that they heard the applicant came to the United States through a neighbor or other family members. Four of the affiants were children at the time, between the ages of seven and twelve years old. These affidavits, most of which are provide no specific time period or are based on second-hand knowledge, provide minimal probative value and bring into question the credibility of the affiants.

In addition, the applicant submitted a sworn and notarized affidavit, dated on March 19, 2004. The applicant stated that she arrived in the United States in the first week of March 1981. The affidavits by [REDACTED] and [REDACTED] provide specific dates to corroborate the applicant's March 1981 date of entry. However, in connection with her Form I-687 application, the applicant stated that she first entered the United States on November 15, 1981. She submitted three very similar affidavits by [REDACTED], and [REDACTED]. All of these affiants corroborated the applicant's November 1981 date of entry by stating that she resided in the United States from November 1981 to the present.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above discrepancy. This inconsistency brings into question the credibility of the applicant, as well as the credibility of her affiants.

The applicant also stated in her March 19, 2004, affidavit that she resided with [REDACTED] from August 1981 to April 1982. The applicant submitted an affidavit by Ms. [REDACTED] corroborating her assertion. [REDACTED] indicated that the applicant resided with her at [REDACTED] from January 1, 1982, to June 1, 1985. However, the applicant also submitted affidavits by [REDACTED], and [REDACTED]. These affiants stated that the applicant resided at [REDACTED] in Union City from November 1981 to December 1986. They made no mention of the applicant residing with [REDACTED] or at the address indicated by Ms. [REDACTED]. The record contains no independent objective evidence to explain this discrepancy. This inconsistency casts doubt on the credibility of the applicant, as well as the credibility of her affiants.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer 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.

While it is evident from the applicant's medical records, employment letters and W-2 statements, that the applicant continuously resided in the United States in 1986 through 1988, with the exception of her brief absence in January 1988, the applicant has not provided credible, contemporaneous evidence of residence in the United States from 1981 to 1986. Although the applicant has submitted numerous affidavits in support of her application, there are also numerous discrepancies which deter from the credibility of the applicant and affiants. There is no independent, objective evidence in the record to resolve these discrepancies.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The submitted affidavits contain several discrepancies and, in some instances, a lack of personal knowledge and specific dates. The absence of sufficiently detailed and consistent 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. Given the applicant's reliance upon documents with inconsistencies and 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.