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**U.S. Citizenship  
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Services**

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FILE:

[Redacted]

Office: HOUSTON

Date:

**JAN 31 2008**

MSC 02 204 63082

IN RE:

Applicant:

[Redacted]

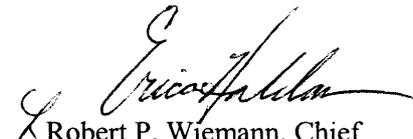
PETITION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF PETITIONER:

[Redacted]

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

The director denied the application, finding the applicant submitted insufficient evidence to credibly document her continuous residence in an unlawful status since before January 1, 1982 to May 4, 1988 and her continuous physical presence in the United States from November 6, 1986 to May 4, 1988. Specifically, the director found that the applicant's sworn statement in her interview on October 20, 2004 contradicted previous claims regarding her trips outside of the country during the relevant period. Consequently, the director issued a Notice of Intent to Deny (NOID) the application on October 22, 2004, and afforded the applicant 30 days in which to submit credible evidence to show that she had continuously resided in the United States since before January 1, 1982 and May 4, 1988. The applicant's response failed to overcome the director's findings, and consequently the application was denied on January 31, 2005.

On appeal, counsel for the applicant alleges that the director erred by concluding that her visits outside of the United States interrupted her continuous residency, and submits additional documentary evidence to support the allegation that the applicant continuously resided in the United States during the requisite period.

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).

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).

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish her continuous unlawful residence and continuous physical presence in the United States for the requisite periods. Here, the submitted evidence consists of the applicant's statement on Form I-687, Applicant for Status as a Temporary Resident, which she signed under penalty of perjury on March 11, 1991. On this form, the applicant claimed that she departed the United States for Mexico on one occasion, from May 23, 1987 to

June 28, 1987, since her arrival in December 1980. (It is noted that the applicant claims on her affidavit for class membership, also signed under penalty of perjury, that she first arrived in the United States in January 1981).

During the applicant's interview on October 20, 2004, the applicant was questioned regarding her absences from the United States during the requisite period. The applicant advised the officer that she had departed the United States three times since arriving without inspection in 1981. She claimed that the first departure was in 1986, when she went to visit her terminally ill brother in Mexico. She claimed that her brother passed away and that she stayed in Mexico for one year and returned to the United States in 1987. No dates were provided. The applicant claimed that her second trip to Mexico took place in 1989 for eight months, and the third in 1997. Her second and third departures are not relevant to these proceedings since they fall outside the requisite period.

The director issued a NOID on October 22, 2004, and afforded the applicant thirty days to explain these inconsistencies and provide additional evidence in support of her eligibility. The applicant failed to overcome the basis for the director's denial, and the application was denied on January 31, 2005. On appeal, counsel for the applicant alleges that the director drew her own conclusions based on speculation and not evidence, and seeks to overcome the director's findings by providing evidence to the contrary.

Upon review, the AAO concurs with the director's findings.

The regulation at 8 C.F.R. § 245a.15(c)(1) provides that 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.

According to the applicant's statements in the October 20, 2004 interview, she was absent for one year, from 1986 to 1987. Therefore, if the applicant's statements in her interview are in fact true, she would have been absent from the United States for close to 365 days, not including the additional absence claimed on the Form I-687 from May 1987 to June 1987. Since there is insufficient evidence to disprove the applicant's claim in the interview, and the evidence submitted on appeal fails to overcome the conclusions of the director, the AAO must conclude that continuous residency during the requisite period has not been established.

Counsel addresses all of the applicant's claims of extensive absences on appeal; however, only the 1986-1987 absence is relevant to these proceedings. Regarding the applicant's claim that she visited her terminally ill brother in Mexico in 1986 and did not return until 1987, counsel chastises the director by asserting that the director merely concluded that one year had passed because the applicant claimed she departed in one year and returned in another. Counsel claims in the appeal brief that the applicant departed in December 1986 and returned in January 1987. Counsel also submits a copy of the brother's death certificate dated December 21, 1986 in support of this contention.

This assertion is not persuasive for two reasons. First, counsel completely ignores the fact that the applicant stated under oath that when she departed the United States for Mexico in 1986, she remained there for *one year*. Therefore, contrary to counsel's assertions, the director was not drawing his own conclusions but basing them on the applicant's own sworn testimony. Second, merely submitting the December 1986 death certificate is insufficient to support her allegations that the applicant was gone for only one month. 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). The death certificate, while establishing the date of death, does not establish the dates of the applicant's arrival and departure.

Furthermore, it is also noted that the applicant appeared for another interview on March 28, 2003 prior to the October 20, 2004 interview relied upon in these proceedings. During that interview, during which she was also placed under oath, the applicant claimed her first departure from the United States did not take place until 1995, at which time her brother died. Neither the applicant nor counsel acknowledged this inconsistent statement. This, coupled with the conflicting statements provided on Form I-687 and during the October 20, 2004 interview, seriously challenge the credibility of the application as a whole. 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). Doubt cast on any aspect of the applicant'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. 582, 591 (BIA 1988).

According to the regulation at 8 C.F.R. § 245a.15(c)(1), no single absence from the United States can exceed forty-five days, and the aggregate of all absences cannot exceed one hundred and eighty (180) days between January 1, 1982, and May 4, 1988 without interrupting continuous residency. Therefore, if the applicant's statement in her October 20, 2004 interview is in fact true, she would have been absent from the United States for approximately 365 days from 1986 to 1987, thereby easily exceeding the 45 day limit for a single absence and the 180 day limit for the aggregate total. Since there is insufficient evidence to disprove the applicant's claim in the interview, conflicting testimony regarding the date of first departure from the March 28, 2003 interview, and no documentary evidence to corroborate the claim on Form I-687, the AAO must conclude that continuous residency during the requisite period has not been established.

It is further noted that the applicant acknowledged that one of the affidavits of support submitted on her behalf was fabricated. According to her testimony in the October 20, 2004 interview, the affidavit of [REDACTED], who claimed he attended her church and saw her daily, was untrue, as she had only been acquainted with this person for one week and never saw him again thereafter. Based on this statement, the AAO is forced to question the validity of the remaining documentary evidence upon which the application is based. Since the application will be denied for the reasons stated above, this issue need not be pursued in detail. However, as stated above, 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.

Given the absence of contemporaneous documentation and unresolved inconsistencies in the record, 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.