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U.S. Citizenship
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FILE:

MSC 01 347 60182

Office: LOS ANGELES

Date:

JUL 01 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, Los Angeles, California, 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 states that the director erred in denying the application because the director misinterpreted the law and failed to give adequate weight to the evidence submitted. Counsel further asserts that the applicant submitted sufficient credible evidence to establish eligibility. Counsel does not submit 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).

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.

In the Notice of Intent to Deny (NOID), dated January 12, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating that she entered the United States before January 1, 1982, and her continuous unlawful residence and her physical presence in the United States, during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated March 4, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID but failed to submit sufficient evidence to establish continuous residence for the requisite period.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters of employment and affidavits as evidence to support her Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted two letters of employment from [REDACTED] Vice-President of Madeline Ceramics Inc., located at 48 N. San Gabriel Blvd., Pasadena, California, dated July 12, 2001, and December 6, 2005, respectively, stating that the applicant had been employed part-time on Saturdays and Sundays, from December 1981 through July 1990, and she was paid \$20.00 a day in cash, plus meals.

The applicant also submitted a letter of employment from [REDACTED] dated May 6, 1988, stating that the applicant was employed as a housekeeper from December 1981 until May 1988 to 1987.

The applicant submitted a questionable letter of employment. In the letter from [REDACTED] Vice-President of Madeline Ceramics Inc., Ms. [REDACTED] states that the applicant had been employed part-time on Saturdays and Sundays, from December 1981 through July 1990. It is noted, however, that the applicant did not list Madeline Ceramics Inc. as a previous employer on her Application for Status as a Temporary Resident, Form I-687, which she signed on April 3, 1990. Additionally, the applicant has failed to submit any objective evidence to explain or justify the discrepancy between

her stated employment history on her Form I-687, and the employment letter. This casts doubts on whether the applicant was ever employed by Madeline Ceramics Inc., 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). 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.

Furthermore, pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. The letters of employment are not on original company letterhead stationery. In addition, the affiants failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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.

Affidavits

The applicant submitted the following:

- 1) A letter from [REDACTED], sworn to on December 6, 2005, stating that he has known the applicant to reside in the United States since 1981;
- 2) A letter from [REDACTED], dated January 26, 2006, stating that she has known the applicant to reside in the United States since December 1981. Ms. [REDACTED] states that she met the applicant when both she and the applicant started working at Madeline Ceramics;
- 3) A letter from [REDACTED], dated January 20, 2006, stating that he has known the applicant to reside in the United States since December 1981;
- 4) A letter from [REDACTED], dated January 19, 2006, stating that he has known the applicant to reside in the United States since December 1981. Mr. [REDACTED] states that he met the applicant when he worked at Madeline Ceramics;
- 5) A letter from [REDACTED], dated January 27, 2006, stating that she has known the applicant to reside in the United States since December 1981. Ms. [REDACTED] states that she met the applicant when both she and the applicant started working at Madeline Ceramics;
- 6) A letter from [REDACTED] dated January 24, 2006, stating that she has known the applicant to reside in the United States since October 1986.

- 7) A form affidavit from [REDACTED], sworn to on April 3, 1990, attesting to knowing the applicant in the United States since November 1981, and that she has kept in touch with the applicant since then; and,
- 8) A form affidavit from [REDACTED], sworn to on March 27, 1990, attesting to knowing the applicant in the United States since 1981. Mr. [REDACTED] states that the applicant is his personal friend.

The applicant also submitted a letter, dated September 21, 1994, from [REDACTED] of St. Anthony's Church located in Oakland, California, stating that the applicant has been an active parishioner since 1981.

Contrary to counsel's assertion, although the applicant has submitted letters and affidavits in support of her application, the applicant has not provided reliable evidence of her residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. As noted above the applicant submitted a questionable letter of employment from Madeline Ceramics, Inc. Three affiants, [REDACTED], and [REDACTED] who attest to knowing the applicant to have resided in the United States since December 1981 also dated their acquaintance with the applicant based on her claimed employment at Madeline Ceramics, Inc., which purportedly commenced in December 1981. In addition, although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. 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.

In addition, the applicant claims that she has resided in the United States since 1981, however, the applicant has not provided any contemporaneous evidence in support of her claim. It is reasonable to expect that the applicant would be able to provide reliable contemporaneous documentation to confirm her residence throughout the requisite period if she has been in the United States since 1981 as she claims. Given the applicant's reliance upon questionable letters and affidavits with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

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, he 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.