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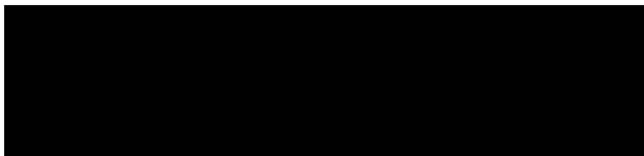
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 302 60027

Office: PHOENIX

Date:

JUL 17 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, Phoenix, and 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, counsel for the applicant submits a brief and additional evidence, and alleges that (1) the decision is erroneous as a matter of law; (2) the decision is contrary to the evidence and ignores compelling evidence; (3) the decision is inconsistent with precedent case law; and (4) the decision is arbitrary and capricious.

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).

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 January 1981 when she crossed the border without inspection. Form I-687, Application for Status as a Temporary Resident, which she also signed under penalty of perjury on November 20, 1990, the applicant claimed to have resided at the following addresses during the requisite period:

1981 to 1983: [REDACTED] Temple City, CA 91780
1984 to Present: [REDACTED], El Monte, CA 91733

The applicant also claimed on Form I-687 that she worked as a cook at Nacho Restaurant in Simi Valley, California from 1985 to the present.

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) Affidavit dated September 6, 1990 by [REDACTED] claiming that she has known the applicant for more than ten years. She claims that the applicant is a hard worker and a good friend of the family, and that they participate together in community social events.
- (2) Affidavit dated September 6, 1990 by [REDACTED] claiming that she has known the applicant since 1981 when the applicant came to live with her family. Ms. [REDACTED] claims that as of the date of the affidavit, the applicant was still residing with her at [REDACTED] in South El Monte, California, and that she never paid the applicant for working around the house.

- (3) Letter dated September 23, 1990 by [REDACTED] brother-in-law of the applicant, claiming that the applicant resided with his brother in El Montano, California "for the year 1988." He claims that before they were married in July 1988, both the applicant and his brother resided with "other people and family" in California.
- (4) Affidavit dated April 3, 2003 by [REDACTED] claiming that he met the applicant in 1983. He claims that he is a good friend of the applicant's husband, and claims that he knows she resided at [REDACTED] in South El Monte, California from 1983 to 1995.
- (5) Letter dated September 6, 1990 by [REDACTED], claiming that the applicant resided at [REDACTED] "for a period of about one year." Mr. [REDACTED] claims that she helped out around his home and worked as his babysitter for one year. He claims she earned \$80 per week and received free room and board. Mr. [REDACTED] does not state what year or time period during which the applicant worked for him.
- (6) Second affidavit by [REDACTED] dated March 31, 2003, claiming that she knows the applicant resided in El Monte, California from February 1982 to April 1990. She claims that the applicant used to take care of her children and that she has been in constant contact with the applicant since 1982.
- (7) Letter dated April 5, 2003 from [REDACTED] claiming that he has known the applicant for 17 years. He claims that the applicant cleaned his apartment in Ontario, California once a week between 1986 and 1987.
- (8) Letter dated April 1, 2003 from Rev. [REDACTED], of Our Lady of Guadalupe Church in El Monte, California, claiming that the applicant was a member of the parish from December 1984 until August 1995.
- (9) Undated corroborative affidavit by [REDACTED] claiming that the applicant went to Mexico on July 20, 1987 to visit her mother who was ill. He claims that he drove her to the border, and that she returned to the United States on August 5, 1987.
- (10) Third affidavit (undated) by [REDACTED], claiming that she knows the applicant lived in California since 1981 and that the applicant lived with her since that time. Although she did not state the address at which they resided, the affiant listed her current address as [REDACTED]
- (11) Second affidavit (undated) by [REDACTED], claiming that she knows the applicant resided in California from 1980 to the present. She claims that they worked together and participated in social events in their community.
- (12) Affidavit dated April 18, 1991 by [REDACTED], claiming that she has known the applicant to reside in the United States since 1981. No additional information was provided.

In addition, the record contained two documents in the Spanish language. One was a letter from the applicant, dated April 3, 2003, and the second was [REDACTED] and [REDACTED] dated January 20,

1995. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

On June 28, 2006, 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 with the exception of one trip to Mexico, 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 documentary evidence submitted in support of her claims was grossly lacking in detail, and 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 July 25, 2006, the applicant through counsel addressed the director's issues. Counsel's letter claimed that the applicant first entered the United States on December 27, 1981, and that the applicant remembered this date because of its proximity to Christmas, her age, and the fact that she had recently suffered another beating by her mother which solidified her decision to go to the United States. Counsel continues by focusing on the applicant young age at the time of entry and notes that she had no legal or formal documentation to support her claimed residence during the relevant period. In support of her claimed continuous unlawful residence, the applicant submitted a self-written affidavit dated July 25, 2006.

The director denied the application on September 26, 2006, noting that there was insufficient evidence to show that the applicant maintained continuous unlawful residence during the requisite period. The director noted that the bulk of documentary evidence from family and family friends were insufficient and were self-serving, since they had an interest in the applicant's application being granted.

On appeal, counsel for the applicant contends that the applicant was in fact present during the required period and claims that the director's basis for denial was erroneous. Specifically, counsel asserts that the director's denial solely on the basis of insufficient affidavits was unwarranted. In support of the appeal, the following evidence was submitted:

- (1) Affidavit dated December 9, 2006 by [REDACTED], claiming that she traveled in the same van from the border to Los Angeles on December 27, 1981. She further claims that she allowed the applicant to stay with her until her friend, [REDACTED], was able to collect her in early 1982. (It should be noted that [REDACTED] and [REDACTED] appear to be the same person, and will be hereafter be referred to as [REDACTED] for purposes of this discussion).
- (2) Affidavit of [REDACTED], dated December 9, 2006, claiming that she first met the applicant in 1979 in Mexico when she visited the applicant's mother's store. She claims that she picked up the applicant in January 1982 and that the applicant began residing with her. The affiant claims that at that time she picked up the applicant, the affiant resided at [REDACTED] in North El Monte, California. She further claims that the applicant did not return home to Mexico after her initial arrival until 1988 in order to get married to her husband.

- (3) Affidavit dated December 9, 2006 by [REDACTED], claiming that he first met the applicant in June 1982. He claims that the applicant would clean his apartment once a week, but did not provide a specific period during which she would work for him.
- (4) Letter dated December 9, 2006 by [REDACTED] claiming that she met the applicant in 1983. She further claims that she has been a friend and next-door neighbor of [REDACTED] and that this is how she met the applicant. She claims that she has lived at the same address, Bell Gardens, CA since that time.
- (5) Affidavit dated December 12, 2006 by [REDACTED] claiming that he has known the applicant since 1986 when she met his brother through [REDACTED]
- (6) Affidavit dated December 9, 2006 by [REDACTED], claiming that she met the applicant during the first few months of 1982. She claims that the applicant would baby-sit her daughters at [REDACTED]'s house from 1986 to 1988.
- (7) Affidavit dated December 8, 2006 by [REDACTED] son of [REDACTED] and next-door neighbor of [REDACTED], claiming that the applicant babysat for him and his brother on weekends at [REDACTED]'s house when he was approximately 5-6 years old (i.e., 1982-1983).
- (8) Affidavit dated December 13, 2006 by [REDACTED], claiming that he has known the applicant since 1982 when she resided with [REDACTED] on [REDACTED] in South El Monte, CA.
- (9) Affidavit dated December 9, 2006 by [REDACTED] claiming that he met the applicant in June 1982 at the home of [REDACTED]. He claims that the applicant cleaned his apartment, but did not provide a time frame in which she performed the cleaning.
- (10) Affidavit dated December 20, 2006 by [REDACTED] claiming that he met the applicant in 1984 when she was residing with [REDACTED]. He claims that the applicant cleaned his apartment, but did not provide a time frame in which she performed the cleaning.

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

On Form I-687, which she signed under penalty of perjury, the applicant claimed to reside at [REDACTED] Temple City, CA 91780 from 1981 to 1983, and at [REDACTED], So. El Monte, CA 91733 from 1984 through May 4, 1988. However, on a supplement to her Form I-485, Application to Register Permanent resident or Adjust Status, the applicant provided the following address history:

12/1981 to 02/1982: El Monte, CA (no address provided)
02/1982 to 04/1988: [REDACTED] South El Monte, CA
12/1988 to 11/1989: [REDACTED] Temple City, CA

Regarding her employment history, she claims the following employment history:

12/1981 to 02/1982: Babysitting (no employer provided)
02/1982 to 07/1988: Babysitting/Housekeeping for [REDACTED]
02/1986 to 09/1987: Housekeeping for [REDACTED]

Both her claimed addresses and her employment history provided on this supplement conflict with the statements submitted under oath on Form I-687. For example, on Form I-687, she claims to have resided at [REDACTED] during her first two years of residence in the United States; however, on the supplement to Form I-485, she claims she did not reside there until after the requisite period. Furthermore, despite her claim on Form I-687 that she worked as a cook at Nacho Restaurant from 1985 to through the end of the requisite period, she makes no mention of this employer and instead claims that she was a babysitter and housekeeper throughout the entire period. 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).

In addition to the applicant's own contradictory claims in the above documents, several of the affidavits and letters submitted in support of the applicant also contain unexplained discrepancies. For example, the affidavit by [REDACTED], dated April 3, 2003, claims that the applicant resided at [REDACTED] in South El Monte from 1983 to 1995. In addition, the letter by [REDACTED] dated September 6, 1990, which claims that the applicant resided at [REDACTED] "for a period of

about one year” corroborates the applicant’s claim on her supplement to Form I-485, where she claimed to reside at this address from December 1988 to November 1989. However, it directly contradicts the applicant’s claim under oath on Form I-687, where she claimed that she resided at this address from 1981 to 1983. Finally, in the applicant’s own affidavit dated July 26, 2006, she claims that she resided at [REDACTED] in El Monte, CA from 1982 to 1986, and did not move to the house at [REDACTED] until 1986. 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. *Id.* at 591.

In further reviewing the affidavits submitted in support of the application, it appears that additional discrepancies are contained therein. First, a number of affiants provide different dates for which they claim the applicant entered the United States. The undated affidavit by [REDACTED] and the affidavit by [REDACTED] dated April 18, 1991 both claim that the applicant resided in the United States since 1981. The undated affidavit by [REDACTED] however, claims that the applicant resided in California since 1980. Finally, despite claims by the applicant in her July 25, 2006 affidavit, where she states that she resided with [REDACTED] for three to four weeks, whereas Ms. [REDACTED] and Ms. [REDACTED] claim, in the December 9, 2006 affidavits submitted on appeal, that she stayed with Ms. [REDACTED] for only a few days.

Moreover, additional discrepancies are noted. The applicant claimed on her form for determination of class membership that she departed the United States on July 20, 1987 to visit her mother who was ill in Mexico. She claims that she returned to the United States on August 5, 1987, and submits a corroborative affidavit (undated) by [REDACTED] attesting to the same facts. However, the applicant’s own affidavit dated July 25, 2006 states that she returned to Mexico on in July 1988, not July 1987 as previously claimed. The December 9, 2006 affidavit by [REDACTED] also claims that the applicant’s first return to Mexico was July 1988 because the applicant had no identification and thus could not legally be married in the United States.

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 vast number of unreconciled inconsistencies, coupled with the minimal information provided is of little probative value to the AAO for purposes of this appeal.

Finally the applicant submits a letter from a Catholic priest in El Monte, California in support of her continuous residence during the requisite period. 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.

The letter from Rev. [REDACTED] of Our Lady of Guadalupe Church, dated April 1, 2003 does not meet the above requirements. First, Rev. [REDACTED] does not state his title, and it is therefore unclear if he is an official of the church. Second, it failed to provide the applicant's address during membership, and further fails to include the organization's seal on the letter. Since the letter omits required information set forth in the regulation at 8 C.F.R. § 245a(4)(iv)(E), this document will be afforded minimal evidentiary weight. Moreover, 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).

Given the absence of 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.