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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 02 248 60252

Office: NEW YORK Date: JUN 27 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

  
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, New York, New York, 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 had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts that the director's decision was made in error. The applicant submits an additional letter from the church.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

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

- Notarized affidavits from [REDACTED] and [REDACTED] of Bronx, New York, who indicated that they have known the applicant since she arrived in 1981 and attested to the applicant's Bronx residence from June 1981 to September 1989.
- A notarized affidavit from [REDACTED] of Bronx, New York, who attested to the applicant's absence from the United States from June 28, 1987, to August 2, 1987.
- A notarized affidavit from [REDACTED] of Jackson Heights, New York, who indicated that he has known the applicant since 1985 and that the applicant was in his employ as a babysitter for four and one half years.
- A notarized affidavit from a cousin, [REDACTED] of Bronx, New York, who indicated that the applicant resided in his home at [REDACTED] from June 20, 1981, to July 28, 1986.
- A notarized affidavit from [REDACTED], who indicated that he works for and represents BJAC Realty Corporation in Bronx, New York and is a supervisor at [REDACTED] at [REDACTED]. The affiant asserted that the applicant resided at [REDACTED] from June 1985 to July 1989.
- A notarized affidavit from [REDACTED] of West Hempstead, New York, who indicated he has known the applicant since 1986 as "our families have had for many years a close relationship and we have [the applicant] in a great esteem."
- A letter from [REDACTED], a doctor, in Jersey City, New Jersey, who indicated that the applicant has been a patient since October 1986.
- A letter from [REDACTED] of St. Roch's Church in Bronx, New York, who indicated that the applicant has been a member of its parish since September 1981.
- A notarized affidavit from [REDACTED] of Jackson Heights, New York, who indicated that the applicant was in his employ as a housekeeper from January 1987 to September 1990.

On September 20, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that her absence in 1987 constituted a break of continuous residence as the single absence exceeded more than 45 days. The applicant was also advised that the letter from St. Roch's church appeared to be fraudulent as the applicant did not claim an affiliation with a church on her Form I-687 application. The director determined that due to the applicant's age (14) at the time of her claimed arrival, the applicant should have been attending school. However, no evidence of school records was submitted.

The applicant, in response, asserted that she resided with family members during the requisite period at [REDACTED] and at [REDACTED]. The applicant stated that she departed the United States on June 28, 1987 and returned on August 2, 1987 and, therefore, did not break her continuous residence. Regarding the letter from the church, the applicant asserted, in pertinent part, "please see enclosed seal clearly showing that the church celebrated its 100<sup>th</sup> year anniversary in 1999. I do not consider the church a club that I am affiliated with. I consider it a place to pray to God every Sunday."

Regarding her education, the applicant asserted:

I went to elementary school in my country, and the family that I was living with had no idea that children 14 years of age have to go to school because in Mexico they usually start working and they do not go to High School, and I thought maybe I would save some money and attend English classes later on.

The applicant submitted:

- A notarized affidavit from [REDACTED] of Astoria, New York, who indicated she has known the applicant since the summer of 1981. The affiant asserted that her aunt resided in the same building as the applicant and the applicant helped her aunt with cleaning and shopping. The affiant asserted that she has kept in touch with the applicant throughout the years.
- A notarized affidavit from [REDACTED] of Sunnyside, New York, who indicated that he met the applicant at a Christmas party in 1986.
- An additional copy of [REDACTED]'s letter from St. Roch's Church along with a photocopy of a pendant celebrating the 100<sup>th</sup> anniversary of St. Roch's Church.

The director, in denying the application, noted that it was not suggested that St. Roch's Church was a club. Rather, item 34 on the Form I-687 application, requested the applicant to list all affiliations with clubs, organizations, churches, unions, businesses. The applicant, however, indicated "none" as her answer.

Because the *exact* dates of the applicant's absence from the United States was not listed on her Form I-687 application, and no sworn statement was taken at the time of her LIFE interview, it cannot be determined that the applicant was outside of the United States for a period of more than 45 days in 1987. Based on the applicant's statement, it is concluded that she did not exceed the 45-day limit for a single absence during the requisite period.

On appeal, the applicant submits a letter dated November 13, 2006, from Father [REDACTED] of St. Roch's Church, who certified that the applicant "comes to mass every Sunday since September 1981 to the present time."

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits 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 knowledge for the testimony provided. The applicant's statement regarding her education has been considered and is plausible. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as she has presented contradictory and inconsistent documents, which undermines her credibility. Specifically:

1. The letters from Fathers [REDACTED] and [REDACTED] have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastors do not explain the origin of the information to which they attest. As previously noted, the applicant indicated that she was not affiliated with any religious organization on her Form I-687 application.
2. The pendant only serves to establish the church's 100<sup>th</sup> existence and does not confirm that the applicant was a member of the parish during the period in question.
3. Mr. [REDACTED] attested to the applicant's residence since 1981, but provided no detail regarding the nature or origin of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.

4. Mr. [REDACTED] indicated that the applicant was in his employ as a housekeeper from January 1987 to September 1990. The applicant, however, did not claim this employment on her Form I-687 application and according to the interviewing officer's notes, the applicant only indicated employment as a nanny since 1985.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously from before January 1, 1982, through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, 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.