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U.S. Citizenship
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FILE: [REDACTED] Office: NEW YORK Date: NOV 03 2008
MSC 03 245 60846

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:
[REDACTED]

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.


for 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 Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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, counsel requests a fair review of the evidence already in the application. Counsel asserts the evidence submitted is sufficient to establish the applicant's continuous residence in the United States during the requisite period.

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 she 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:

- Letters from [REDACTED] and [REDACTED] of Bayville, New York, who indicated that they have known the applicant for the past ten years and attested to the applicant's moral character.
- A letter dated October 19, 1991, from [REDACTED] of Bayville, New York, who indicated that the applicant has been in her employ as a housekeeper and has resided in her home at [REDACTED] since 1985. The affiant also attested to the applicant's moral character.
- A letter dated October 23, 1991, from [REDACTED] of Bayville, New York, who indicated that the applicant had been in her employ as a housekeeper and had resided in her home at [REDACTED], from October 1981 to December 1985.
- A letter dated March 12, 1992, from Reverend [REDACTED] who indicated that the applicant has worshiped and attended religious services at St. Bartholomew's Church since 1981.
- A Certificate of Completion issued on June 24, 1982, indicating the applicant had successfully completed a course in English.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Queens, New York since May 1981. The affiant asserted that she met the applicant at a friend's house.
- A notarized affidavit from [REDACTED] who attested to the applicant's residence in Manhattan, New York since May 1981. The affiant asserted that she met the applicant at a friend's party.

On April 16, 2007, the director issued a Notice of Intent to Deny, which advised the applicant, in pertinent part:

We have reviewed the evidence you have presented, as well as the testimony you gave during your interview on May 11, 2004. During the review a number of inconsistencies and contradictions were noted. During your oral testimony and on your I-687 (Application for Status as a Temporary Resident) you indicated that you entered the United States on 10/15/1987. You furnished no documentation in support of your claim of residency other than affidavits. You have also provided contradictory affidavits about your entrance. The affidavit from [REDACTED] dated November 16, 1991 indicated that you resided in the United States from 5/81 to Present and the affidavit from [REDACTED] dated November 20, 1991 indicates that you resided in the United States from 10/1983 to Present. Given all of the information above, you have failed to submit credible documents which would constitute a preponderance of evidence as to your residence in the United States during the statutory period. Furthermore, it is deemed that the affidavits you submitted are not corroborated by other evidence in the record, nor are they credible.

A review of the interviewing officer's notes and the applicant's Form I687 application do not support the director's finding that the applicant indicated that she entered the United States on October 15, 1987. The interviewing officer's notes and the Form I-687 application both indicate that the applicant *departed* the United States in October 1987. As such, that finding of the director will be withdrawn.

Counsel, in response, asserted that the applicant has submitted sufficient documents, which were affidavits of circumstances from individuals who were able to testify to the applicant's residence and employment during the requisite period. Counsel asserted that the applicant came to the United States in 1981 as

indicated on her Form I-687 application. Counsel provided copies of documents that were previously submitted.

The director, in denying the application, noted the applicant did not submit any new evidence in support of her application, and that no evidence had been submitted to corroborate the affiants' affidavits.

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 statements issued by counsel have been considered. 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.

██████████ and ██████████ indicate that they have known the applicant for over ten years, but failed to provide the applicant's place of residence and provide details regarding the nature or origin of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence during the requisite period seriously detracts from the credibility of her claim

The letter from ██████████ has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests.

██████████ and ██████████ indicate that the applicant resided in Queens and Manhattan during the requisite period. However, in the affidavits from ██████████ and ██████████, the affiants indicate that the applicant was residing in Bayville during the requisite period.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statement from the affiants has been submitted to resolve the contradicting affidavits. As such, the affidavits have little probative value or evidentiary weight.

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 regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law

Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that 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.