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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 247 63024

Office: GARDEN CITY

Date: NOV 19 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:

Self-represented

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in Garden City, New York. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982, and thereafter resided continuously in the United States in an unlawful status through May 4, 1988.

On appeal, the applicant asserts that she has been residing continuously in the United States since September 1981, and that the documentation of record supports this claim.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. See 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.

The applicant, a native of Trinidad who claims to have lived in the United States since September 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on June 4, 2002. On April 15, 2004 the applicant was interviewed at the New York District Office. At that point in the proceeding the record contained the following evidence of the applicant’s residence and presence in the United States during the years 1981-1988.

Three identical affidavits, dated October 1, 1993, by [REDACTED], residents of Far Rockaway, Brooklyn, and Uniondale, New York, stating that they knew the applicant resided at [REDACTED] from September 1981 to February 1990.

An affidavit by [REDACTED], a resident of Winter Park, Florida, dated September 24, 1993, stating that the applicant was introduced to her by a friend in 1981, that the applicant resided with her in New York for several years, and that the applicant sometimes cared for her children.

An affidavit by [REDACTED] a resident of Brooklyn, New York, dated September 28, 1993, stating that she had known the applicant for the past seven years (since 1986).

- An affidavit by [REDACTED] a resident of Winter Park, Florida, dated September 23, 1993, stating that she met the applicant in 1985, while living in New York City, and that the applicant often provided care to her children.
- A Form I-94 stamped by “U.S. Immigration” in New York City on August 4, 1986, admitting the applicant into the United States on a B-2 visa valid until February 3, 1987.
- A photocopied Form W-2, Wage and Tax Statement, for the year 1986, issued to the applicant at [REDACTED] by [REDACTED] e Center Inc. in Brooklyn.
- A photocopied document from NYC Technical College, Office of the Bursar, dated January 28, 1988, listing the courses for which the applicant was enrolled in the spring of 1988, the tuition costs, and the class schedule.

On May 18, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the affidavits in the record lacked sufficient substance and credibility to establish the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. In addition, the director cited the applicant’s testimony at her interview on April 15, 2004 regarding travel outside the United States, including a trip to Trinidad from June to August 1986 that exceeded the 45-day maximum set in the regulations for a single absence from the United States, thus interrupting the applicant’s continuous residence in the United States. The director also cited the other documentation submitted by the applicant, but indicated that none of it, individually or collectively, demonstrated the applicant’s continuous residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant reiterated her contention that she entered the United States in September 1981 and lived with [REDACTED] and her family for the duration of the 1980s. The applicant acknowledged that she visited Trinidad for about a month in the summer of 1985, when her mother was ill, and that she traveled to Trinidad again in June 1986 to obtain a U.S. visa so she could enroll in college, returning to the United States with that visa in August 1986. The applicant submitted a new letter from [REDACTED] dated June 13, 2007, stating once again that she met the applicant in 1981 and that the applicant lived with her until 1990. [REDACTED] supplemented her letter with a series of photographs taken in her apartment between 1980 and 1989, only three of which – one dated in 1986 and two in 1989 – include the applicant.

On July 31, 2006, the director issued a Notice of Decision denying the application on the ground that the applicant’s response to the NOID failed to overcome the grounds for denial.

On appeal, the applicant reiterates her claim to have entered the United States in September 1981, from Canada, and asserts that the totality of the evidence establishes her continuous residence in the United States during the requisite period for LIFE legalization. The applicant acknowledges that her trip to Trinidad in 1986 exceeded the 45-day maximum for a single absence from the United States, but maintains that her aggregate days of absence from the United States during the statutory period from January 1, 1982 through May 4, 1988 did not exceed the 180-day maximum. The applicant submitted additional affidavits from [REDACTED] and her sister, [REDACTED], together with documentary evidence of their presence in the United States during the decade of the 1980s.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

While the applicant claims that she entered the United States in September 1981 and did not depart the country until a brief trip to Trinidad in July-August 1985, the record includes photocopied pages from her old passport that indicate more travel by the applicant than she has acknowledged in this proceeding. For example, the passport was issued to the applicant in Port of Spain, Republic of Trinidad & Tobago, on January 14, 1982, as confirmed by a stamp in the passport and a letter from the consulate general in New York, dated September 22, 1993. The applicant has not explained how she could have been issued a passport in Trinidad on a date she claims to have been living in the United States. In addition, there are stamps in the passport recording a bank transaction at the St. Augustine Shopping Centre in Trinidad on December 18, 1984, an entry into Barbados on December 19, 1984, and a return to Trinidad & Tobago in January 1985.

The applicant does acknowledge that she traveled to Trinidad on June 1, 1986 to procure a U.S. visa and returned to the United States on August 4, 1986. This information is confirmed in the passport by stamps of the U.S. Embassy in Port of Spain on June 11, 1986, granting the applicant a B-2 visa valid until September 11, 1986, and U.S. Immigration in New York on August 4, 1986 (together with the aforementioned Form I-94), recording the applicant's entry into the United States with a B-2 visa (valid until February 3, 1987).

Even if the AAO accepted the applicant's claim to have entered the United States initially in September 1981, the passport-related evidence discussed above undermines her claim to have maintained continuous residence in the United States through May 4, 1988. The issuance of the applicant's passport in Trinidad in January 1982 and the applicant's travel from Trinidad to Barbados in December 1984 and back to Trinidad in January 1985 indicate that the applicant had more absences from the United States than she admitted in her interview for LIFE legalization, or in an earlier Form I-687 (application for temporary resident status) she submitted in 1993. It

is unclear whether these conflicts in the record reflect a lack of candor or a faulty memory. In any event, they raise questions as to how long the applicant was absent from the United States in each case, whether either of these trips exceeded the 45-day maximum for a single absence from the United States, and whether these trips, together with other(s) the applicant has acknowledged, exceeded the 180-day maximum for aggregate absences from the United States. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988).

What is clear from the passport pages is that the applicant definitely exceeded the 45-day maximum for a single absence from the United States during her visit to Trinidad from June 1 to August 4, 1986. An absence of such duration – 64 days – interrupts an alien's continuous residence in the United States unless he or she can show that a timely return to the United States could not be accomplished due to emergent reasons. *See* 8 C.F.R. § 245a.15(c)(1). While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

The applicant states that she traveled to Trinidad for the purpose of obtaining a U.S. visa so she could return to the United States and enroll in college. Her passport stamp shows that she obtained her B-2 visa on June 11, 1986. Yet she remained in Trinidad nearly two months more before flying back to the United States. The applicant has not cited any unexpected developments in Trinidad, or elsewhere, that delayed her return to the United States for such an extended period of time. The AAO concludes, therefore, that the applicant has not shown that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1) and *Matter of C-*, prevented her return to the United States within the 45-day period allowed in the regulation. Accordingly, the applicant's 64-day absence from the United States from June to August 1986 interrupted her continuous residence in the United States.

Based on the foregoing analysis, the AAO determines that the applicant has failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.15(c)(1). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.