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20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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L-2



FILE:



Office: NEW YORK

Date:

OCT 30 2008

MSC 02 243 68198

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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:** On June 11, 2007, the District Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to meet her burden of proof to establish that she first entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988. In an April 28, 2007, Notice of Intent to Deny (NOID), the director noted that the applicant did not submit evidence of her entry into the United States in 1980 on a B-2 visitor's visa and that there is no evidence of such entry in Citizenship and Immigration Services (Service) records. The director also noted that the only documents the applicant submitted to establish her continuous residence during the required period - letters, affidavits and proof of medical treatment - were not amenable to verification and were not credible and detailed. In response the applicant asserted that the Service did not make an effort to verify the documents she submitted. The director noted that the medical appointment with the New York City Department of Health scheduled for January 13, 1980, fell on a Sunday and that the department never issued appointments for Sundays. The director also found that additional affidavits the applicant submitted were not sufficiently detailed.

On appeal, counsel for the applicant asserts that the applicant lost her passport and cannot prove when she first entered the United States. Counsel further asserts that the applicant is unable to provide primary documents to establish her continuous residence during the statutory period but does submit photographs taken in the United States during that period. Counsel asserts that the applicant is willing to go to the location in the United States where the pictures were originally taken to prove that the pictures were taken in the United States. Counsel asserts that the three additional affidavits satisfied the "credibility standard."

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 states 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.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 record reflects that on May 31, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On July 21, 2005, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden of establishing by a preponderance of the evidence, that her claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The applicant has provided the following evidence relating to the requisite period:

- Three photographs of the applicant. One of the photographs is of a woman sitting at a table outdoors, eating what appears to be an ice cream cone. The other two

photographs were also taken outdoors and appear to be of the same woman. Two of the photographs have the date "Sept 87" transposed on top of them in the bottom right corner. These photographs are of minimal probative value and can be given very little weight. Although Sept 1987 is transposed on them they are not actually dated. While counsel says the applicant is willing to return to the locations where the photos were taken, he has not provided the locations where or dates when these photographs were taken. Even if they proved the applicant was in the United States during the stated period, they would not establish her continuous residence in the United States at the time;

- Two "Chest Clinic Encounter Forms" both dated in January 1980. Although the applicant's name and date of birth is written on these forms, no address is included on any of them, and, while an appointment form may indicate presence in the United States on the date issued, it has minimal weight as evidence of the applicant's continuous residence in the United States during the statutory period;
- A letter from Globe Security Systems signed by [REDACTED], operation manager. The letter indicates that the applicant's employment application was received and informs the applicant that she needs to provide further documentation for further processing. Although the applicant's name is written on the letter, no address is included on it, and, while such a letter may indicate presence in the United States on the date issued, it has minimal weight as evidence of the applicant's continuous residence in the United States during the statutory period;
- A handwritten letter from [REDACTED] Ms. [REDACTED] states that she and the applicant met again in the United States on Thanksgiving Day in November of 1981, but does not explain how she remembers it was 1981 when she reconnected with the applicant. And although [REDACTED] asserts that she knows that the applicant came to the United States illegally on October 20, 1981, she provides no details to indicate that she has any personal knowledge of the applicant's initial entry into the United States. Ms. [REDACTED] states that the applicant lived at [REDACTED] in Patterson, New Jersey when she first arrived, that she and the applicant are best friends, and that they are in constant contact. She does not, however, provide any details about the other addresses where the applicant has lived or the circumstances of her residence during the requisite statutory period and during their relationship of over 27 years. Given this lack of detail, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period;
- A letter dated May 24, 2002, from [REDACTED]. Mr. [REDACTED] asserts that he has known the applicant since October 1980. He states that the applicant is an

immigrant from Nigeria, Africa, who resided in Brooklyn, New York, when he first met her. He asserts that from 1980 to 1982 he became well-acquainted with the applicant before she moved out of New York. While [REDACTED] states that he has known the applicant since 1980, he does not indicate when, where, or under what circumstances he met the applicant. He does not indicate whether they first met in the United States or outside the United States. He does not provide any specific details of the circumstances of the applicant's residence in the United States during the statutory period. He does not provide the addresses where the applicant lived and appears to have no personal knowledge of the applicant's entry into the United States. Given this lack of detail, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period; and,

- A letter from Mr. [REDACTED]. The letter is not dated and not notarized. Mr. [REDACTED] attests that he has known the applicant since January 1982. He states that "a while ago, [the applicant] moved out of New York and we stayed in touch because she is friendly and loving." Mr. [REDACTED] asserts that his friendship with the applicant has grown since she moved back to New York. Mr. [REDACTED] does not indicate when, where, or under what circumstances he met the applicant or whether they first met in the United States or outside the United States. He does not provide any specific details of the circumstances of the applicant's residence in the United States during the statutory period. He does not provide the addresses where the applicant lived and appears to have no personal knowledge of the applicant's entry into the United States. Lacking such relevant details, this affidavit can only be given minimal weight as evidence of the applicant's continuous residence during the requisite period.

As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. In this case, her assertions regarding her entry prior to January 1, 1982 and residence through May 4, 1988, are supported only by affidavits and two medical appointment forms, all of which have minimal probative value for the reasons described above. When viewed within the context of the totality of the evidence, such documentation does not place the applicant in the United States prior to January 1, 1982, nor is it sufficient to support a finding that it is more likely than not that the applicant resided continuously in the United States from prior to January 1, 1982, through May 4, 1988.

The record of proceedings contains other documents, including a Con Edison electric bill dated April 5, 1993; two licenses issued on October 6, 1998, and, November 30, 2003, to practice as a registered practical nurse from the state of New York. This evidence is dated after or refers to events that occurred after May 4, 1988, and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have first entered the United States in January 1980 through New York, as a B-2 visitor, and to have resided for the duration of the requisite period in Florida. As noted above, to meet his or her burden of proof, the applicant must provide evidence of eligibility apart from his or her own testimony. The applicant has failed to do so. In this case, her assertions regarding her entry are not sufficiently supported by the evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence she entered into the United States before January 1, 1982, and that she resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, detracts from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance on documentation that lacks relevant details and any probative evidence of her entry and residence in the United States, the applicant has failed to establish by a preponderance of the evidence that she maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.