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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEW YORK, NEW YORK Date: **SEP 03 2008**
MSC 02 078 61934

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: 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 forwarded to the Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a faint circular stamp.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director), New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director also indicated that the applicant failed to provide sufficient, credible evidence that she was continuously present in the United States during the statutory period beginning on November 6, 1986 and ending on May 4, 1988.

On appeal, the applicant indicated that the director had failed to specify why she had determined that the evidence submitted lacked probative value and she had failed to specify what evidence she would consider probative. The applicant also indicated that the evidence which she had submitted into the record was probative.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

See also 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

(1) 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.

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 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 petitioner 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 petitioner 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 or petition.

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 absence of contemporaneous evidence is not necessarily fatal to the applicant’s claim of continuous residence in the United States during the statutory period. *See Matter of E-M-* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

Documentary evidence may be in the format prescribed by CIS regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and “state the employer’s willingness to come forward and give testimony if requested.” *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a “relevant document” under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

On the other hand, doubt cast on any aspect of the applicant’s proof relating to inconsistencies in the evidence, for example, may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO’s *de novo*

review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

At issue in this proceeding is whether the applicant has submitted credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record indicates that on or near February 16, 1993, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On December 17, 2001, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains documents and other evidence that relate to the applicant's claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, including:

1. The notes from the applicant's February 18, 2004 LIFE legalization interview which indicate that the applicant testified that she entered the United States during November 1980 and that she never left the United States between the date of that first entry and the date of her 2004 interview.
2. The Form I-687 which the applicant signed under penalty of perjury on February 16, 1993. At item 35, the applicant stated that she departed the United States on July 5, 1987 and re-entered on August 7, 1987. She also stated that she departed the United States on March 10, 1989 and re-entered on an unspecified date in April 1989. At item 16, she indicated that her first entry into the United States was during August 1981. At item 33, she indicated that she began residing in the United States during August 1981.
3. The Form for Determination of Class Membership in *CSS v. Thornburgh (Meese)* which the applicant signed under penalty of perjury on October 20, 1992. At item 6, the applicant stated that she first entered the United States during August 1981. At item 9(a), she stated that she exited the United States on July 5, 1988 and at item 9(e) she stated that she re-entered the United States on August 7, 1988.
4. The Affidavit of Circumstances which the applicant signed under penalty of perjury on October 20, 1992. At item 7, the applicant stated that she entered the United States during August 1981. At item 8, she stated that she exited the United States on July 5, 1988. At item 11, she stated that she re-entered the United States on August 7, 1988.
5. The applicant's affidavit dated July 7, 1993 on which the applicant attested that she entered the United States during 1981.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

6. The Form I-215C, Affidavit in an Administrative Proceeding, dated September 17, 1992 on which the applicant attested that she made an entry into the United States without inspection during April 1989.²
7. The statement of [REDACTED] dated February 9, 2004 in which [REDACTED] stated that he has known the applicant since 1986 and that she has been living in the United States since 1980. He also stated that he is the applicant's brother-in-law.
8. The affidavit of [REDACTED] dated March 12, 1993 in which the affiant attested that the applicant is his best friend, that she has been in the United States since 1981, and that from August 1981 through September 1992, the applicant resided at [REDACTED], Bronx, New York 10458.
9. The statement of [REDACTED] dated February 13, 2004 in which [REDACTED] stated that he has known the applicant since 1985. [REDACTED] did not indicate whether he met the applicant in the United States or whether he had knowledge that she had resided continuously in the United States since 1985. He did indicate that at the time he wrote that statement in 2004, the applicant resided in Bronx, New York.
10. The affidavit of [REDACTED] dated March 12, 1993 which bears the same signature as that on the statement of [REDACTED] dated February 13, 2004 summarized at item 9 above. On this affidavit, [REDACTED] attested that he has personal knowledge that the applicant resided at [REDACTED] Bronx, New York from August 1981 through September 1992.
11. The affidavit of [REDACTED] dated March 12, 1993 on which the affiant attested that he has personal knowledge that the applicant resided at [REDACTED], Bronx, New York from August 1981 through September 1992.

On February 20, 2004, the director issued a Notice of Intent to Deny (NOID) which indicated that the applicant had failed to demonstrate continuous residence in the United States during the statutory period.

In the NOID, the director pointed out that at her February 18, 2004 LIFE legalization interview, the applicant testified that she entered the United States during 1980 and that by the time of the 2004 interview, she had never exited the United States. Yet, elsewhere in the record, the applicant had acknowledged that she was outside the United States from July 5, 1987 through August 7, 1987 and from March 10, 1989 through April 1989. The director concluded that the applicant had willfully misrepresented a material fact relating to her continuous residence in the United States during the statutory period in order to procure a benefit under the Immigration and Nationality Act (the Act), and as such was inadmissible under section 212(a)(6)(c)(i) of the Act. Thus, the director intended to deny the application.

² It is noted that on the applicant's birth certificate in the record and on the Form I-485, the applicant's date of birth is listed as September 13, 1965. However, in the separate proceedings for which this Form I-215C was produced, the applicant listed October 9, 1965 as her date of birth. The separate proceedings bears A-number [REDACTED].

The applicant's rebuttal did not address the inconsistencies in the record between the applicant's claim that she had never departed the United States since entering in 1980 and her claims that she had exited the United States during 1987 and 1989. Instead, the applicant submitted a copy of a money order that a New York City bank purportedly issued to her on January 20, 1987. She also submitted various forms of contemporaneous evidence which place her in the United States after the statutory period. In addition, she submitted statements of individuals who claim to have knowledge of the applicant residing in the United States during and after the statutory period.

On July 3, 2006, the director denied the application based on the reasons set forth in the NOID. In addition, the director indicated that the statement of [REDACTED] dated February 9, 2004 was inconsistent or contradictory in that [REDACTED] claimed to have only met the applicant in 1986 and yet he also indicated that he had knowledge of her having resided in the United States since 1980. Based on this, the director concluded that this statement lacked probative value. The director also indicated that the statement of [REDACTED] dated February 13, 2004 lacked probative value in that in this [REDACTED] only asserted that he met the applicant in 1985. He made no assertion that the applicant resided in the United States at that time or resided in the United States subsequent to 1985 and throughout the remainder of the statutory period.

The AAO finds that the applicant's assertions made on appeal that the director failed to adequately identify her reasons for denying the application and failed to adequately identify her reasons for finding that the statements of [REDACTED] and [REDACTED] lacked probative value are not persuasive. The AAO would underscore that the applicant never addressed on rebuttal or on appeal the director's point made in the NOID that the applicant provided contradictory statements in that she testified that she never exited the United States during the statutory period and she submitted statements which specified that she had exited the United States during 1987.

The director also suggested that she was denying the application because the applicant had failed to provide independent evidence of her departure from the United States in 1987 and in 1989. This point in the notice of decision is withdrawn. In this record, there is contradictory evidence as to whether the applicant remained in the United States throughout the statutory period or whether she had exited the United States during that period. This led the director to conclude that the applicant had willfully misrepresented that she had not exited the United States during the statutory period during her LIFE legalization interview in order to procure lawful permanent residency. By testifying in this manner, the applicant had cut off a material line of inquiry regarding, for example, whether she had been outside the United States for over 45 days during one absence in the relevant period. The applicant might have been able to overcome this inconsistency and apparent willful misrepresentation of a material fact by providing independent, objective evidence of her 1987 departure and re-entry during the statutory period, if such evidence demonstrated that she was out of the United States 45 days or less during that absence. As such, a failure to provide such independent evidence of the 1987 departure *and re-entry* in response to the NOID might be viewed as an additional grounds for denying the application. However, the AAO finds that the failure to provide independent evidence of the 1987 and 1989 departures alone does not amount to an additional basis for denying the application. If the applicant had provided such evidence, it would have had no impact on the outcome in this case.

The applicant failed to provide evidence to overcome and failed even to address the inconsistencies in the evidence of record, pointed out by the director in the NOID, between the applicant's testimony that from November 1980 until February 2004 she had never exited the United States and her written statements that she had exited the United States during 1987 and 1989.

The applicant also testified that she entered the United States during November 1980. She submitted the statement of [REDACTED] dated February 9, 2004 which indicates that she began residing in the United States during 1980. Yet, the applicant also stated under penalty of perjury on various forms in the record that she first entered the United States and began residing in this country during August 1981. She submitted the affidavits of [REDACTED] dated March 12, 1993 and [REDACTED] dated March 12, 1993 which attest that she began residing in the United States during August 1981. The applicant also submitted the statement of [REDACTED] dated February 13, 2004 on which [REDACTED] stated that he has only known the applicant since 1985.

These discrepancies cast serious doubt on the authenticity of all the evidence submitted. This in turn casts doubt on the applicant's claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that she resided continuously in the United States throughout the statutory period. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant failed to provide credible, contemporaneous evidence that might be considered independent, objective proof of her having resided in the United States from a date prior to January 1, 1982 and throughout the statutory period. The money order dated January 20, 1987 and the two envelopes in the record which the applicant claimed were sent to her in the United States during the statutory period, even if the postmarks with which they are stamped were found to be authentic, are not sufficient to establish that the applicant was in the United States *throughout* the statutory period.³

The AAO also finds that the various statements in the record which purport to substantiate the applicant's continuous residence in the United States throughout the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States in an unlawful status from a date prior to January 1, 1982 through May 4, 1988, and that these documents do not have probative value in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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

³ The other envelopes in the record which are addressed to the applicant in the United States are postmarked with dates that occurred after May 4, 1988. These envelopes are neither probative nor relevant to the applicant's claim that she was in the United States during the statutory period.