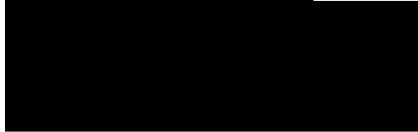




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FILE: [REDACTED]  
MSC 03 224 62077

Office: NEW YORK Date:

**SEP 22 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, counsel argues that the director failed to consider all the evidence that was submitted in support of the applicant's LIFE application. Counsel puts forth a brief disputing the director's findings and submits additional documentation along with copies of documents previously submitted in support of the appeal.

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.

At the time the applicant filed her LIFE application, she provided no documents to establish her continuous unlawful residence since before January 1, 1982, through May 4, 1988.

On April 23, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that she had not provided any evidence to establish her continuous unlawful residence since before January 1, 1982, through May 4, 1988.

It is noted that the director noted, “[t]he documentation submitted as proof of residency, various w-2’s, IRS Tax forms, lease’s etc., only confirm that you were a resident of the United States during those specific dates.” However, a thorough review of the record does not contain any of these documents. As such, the director’s statement regarding these documents is withdrawn.

Counsel, in response, submitted an affidavit from the applicant, who indicated that she entered the United States as a visitor in 1981 and during the requisite period, made three departures from the United States; May 10, 1986 to May 16, 1986, July 20, 1986 to July 28, 1986 and August 15, 1987 to September 7, 1987. The applicant asserted that during her first visit to New York, she visited [REDACTED] a doctor, who has since retired. The applicant asserted that she also visited in New York, [REDACTED] a doctor, on two occasions; the first was in March 1988. The applicant stated that upon receipt of the Notice of Intent to Deny, she attempted to locate both doctors, and visited the medical facilities in Jamaica New York. The applicant stated that she was informed by another doctor that “the records dating back twenty plus years ago would most probably have been destroyed” and that [REDACTED] office informed her that the law allowed them to destroy medical records after ten years. In 1988, the applicant asserted that her brother, [REDACTED] opened a joint bank account at the Manufactures Hanover Bank, and that “this arrangement continued until I came to reside in New York City in 1991 during which time I opened my own bank account...” In an effort to get proof of this joint bank account, the applicant asserted that she contacted J.P. Morgan Chase Bank (an affiliate of Manufacturers Hanover Bank) and was informed that “retention time for all such documents was seven (7) years.” The applicant asserted, in pertinent part:

During the years 1982 through 1986, I lived mostly “under the radar.” By that I meant that I was mostly invisible as far as the Government of the United States was concerned. Upon my arrival at the Miami International Airport, my friends were the most hospitable. It was my friends who later conducted any type of business transaction on my behalf with much kindness and understanding.

In the area of employment, I often relied on the kindness of friends from the church or referrals from previous employers. Whatever duties that I performed, I carried out with much discipline and respect.

\* \* \*

When I finally decided that I would move to New York to be with my family, I rented a small furnished room at [REDACTED] Every time I visited New York I brought some of my belongings and left in the room. Anything that I purchased while in New York, I left at the apartment with the intentions of eventually moving to New York.

Sometime in March 1990, I received a phone call saying that I should come to New York because the house where my room was located was burned down. The basement was flooded out due to the firemen using water to fight the fire on the first and second floors. All my belongings and documents locked in my small room were destroyed. The house was condemned by the fire

department and it was months before they gave me permission to go in and retrieve whatever I could. I was never compensated for the loss and I never again saw the landlord whom I was told had relocated out of the state.

\* \* \*

During my previous years of employment, I worked diligently caring for the elderly. My attorneys tried to locate [REDACTED] Sunrise, Florida whom I worked from as a housekeeper from August 1984 through August 1987, but were unable to locate her. Since [REDACTED] was in her seventies during the time I worked for her, she would most probably be in a nursing home if she were still alive, or she may be deceased. I tried on my own to locate [REDACTED] Hall, whom I was employed by from January 1988 through late summer 1991, but I could not locate him.

\* \* \*

I have made every attempt that I could to try to locate some evidence of my continuous physical presence in the United States during the period November 6, 1986 through May 6, 1988. It is said that hindsight is 20/20. Had I known twenty plus years ago that today I would need to establish my whereabouts during the period in question, I would have been "living out loud" instead of living "under the radar." Without physical proof, you have no reason to believe that I was continuously physically present in the United States during November 6, 1986 through May 4, 1988. Nevertheless, I was continually present and that is the truth.

Counsel submitted:

A partial copy of the applicant's passport, which indicated that the applicant had previously traveled on a passport that was issued on January 15, 1981 and valid through January 14, 1991.

A notarized affidavit from the applicant's brother, [REDACTED], New York, who asserted that he immigrated to the United States in 1983 and attested to the applicant's entry into the United States in 1981 and to her residence in Florida during the requisite period. The affiant asserted that he stayed in touch with the applicant via the telephone when he was residing in Jamaica.

- A notarized affidavit from [REDACTED] of Sunrise, Florida, who indicated that she has known the applicant for over 40 years and attested to the applicant's residence in Fort Lauderdale, Florida since April 1981. The affiant asserted that she immigrated to the United States in February 1981, resided in Rochester, New York until April 1988, and maintained her friendship with the applicant over the telephone. The affiant asserted that she moved to Fort Lauderdale in April 1988 and the applicant resided with her at [REDACTED] Florida.
- A notarized affidavit from [REDACTED] of Lake Worth, Florida, who indicated that she met the applicant during the summer of 1981 during one of her annual vacations to Florida. The affiant asserted that over the years she has watched the applicant mature as she faced difficult times and hardships and she and the applicant have developed "a somewhat mother-daughter relationship." The affiant attested to the applicant's moral character and asserted that she has maintained a good relationship with the applicant over the years.

A fire report which indicated that on March 25, 1990, a fire occurred at [REDACTED]

Counsel also submitted other documents that served no purpose as they attested to the applicant's residence and physical presence in the United States *subsequent to* the period in question. Accordingly, these documents have no probative value or evidentiary weight.

On appeal, counsel asserts that the director made no mention of the remaining documents that were submitted in support of the LIFE application.

Just because the director did not specifically mention each document submitted by counsel does not mean that they were not considered. The director, in denying the application, acknowledged that evidence had been submitted in response to his notice, but that the information and documentation were insufficient to overcome the grounds for denial.

Counsel asserts that the examiner's notes taken at the time of the applicant's initial interview on June 14, 1991, indicating that the applicant "appears to be a class member" should be considered. Counsel asserts that nowhere in the application is there a recommendation by the examiner for a denial based on a suspicion of fraud or for a verification request. However, this notation was not a definitive statement and it was based only on the answers given by the applicant on her Form for Determination of Class Membership pursuant to the *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC) class action lawsuit. The applicant, at the time, only provided a copy of her birth certificate and passport.

Counsel submits a notarized affidavit from [REDACTED] a realtor of D.G. Allen Real Estate in Jamaica, New York, who indicated that in March 1988, he rented on behalf of the landlord a room in a private house at [REDACTED] to the applicant. The affiant asserted that in March 1990, a fire occurred at the premises and he helped the applicant to relocate to a different residence.

Counsel also submits a notarized affidavit from [REDACTED], who indicated that he has known the applicant for over 19 years and during 1988 to 1991, the applicant was in his employ as a housekeeper.

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 the applicant and 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.

The employment affidavit from [REDACTED] has little evidentiary weight or probative value as the affiant failed to provide a telephone number or address and, therefore, the affidavit is not amenable to verification by the CIS.

The applicant's passport only serves to establish that it had been issued on January 15, 1981 and that the applicant had traveled on it. It does not imply nor prove that the applicant used the passport to enter the United States in 1981.

As [REDACTED] was residing in his native country, Jamaica, until 1983, he cannot attest to the applicant's residence in the United States prior to 1983. Further, as the affiant is applicant's brother, he also must be viewed as having a self-evident interest in the outcome of proceedings, rather than as an independent, objective and disinterested third party.

The applicant claimed on her Form I-687 application to have resided at [REDACTED] Terrance, Fort Lauderdale, Florida from April 1981 to April 1988. The applicant, however, provided no contemporaneous evidence or affidavits from affiants who were residing in Florida that could attest to this residence. Except for [REDACTED] who relocated to Florida in April 1988, none the affiants who provided affidavits resided in the state of Florida.

The applicant asserts that she has tried, but was unable to locate [REDACTED] for whom she was employed as a housekeeper from August 1984 to August 1987. There is no indication, however, that the applicant, tried to locate her other employers, [REDACTED] and [REDACTED] for whom she claimed to have been employed from September 1981 to November 1982 and February 1983 to June 1984, respectively.

The applicant's assertion that if she had known 20 years ago that today she would need to establish her whereabouts during the period in question, "I would have been living out loud instead of living under the radar" has no merit. Assuming, arguendo, the applicant did attempt to file her Form I-687 application in September 1987, which was approximately 20 years ago, the applicant would have known that documentation was required to establish her whereabouts during the period in question.

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 (5<sup>th</sup> 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.

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).

The record reflects that on October 21, 1997, a Form I-360, Petition for Amerasian, Widow or Special Immigrant, was filed on behalf of the applicant. The petition included a copy of the applicant's complete passport which indicates that a B-1/B-2 non-immigrant visa was issued in Kingston, Jamaica on May 14, 1986 valid through August 14, 1986. The applicant was a member of the Montego Bay High School Concert touring from July 28, 1986 through August 7, 1986. The applicant lawfully entered the United States on July 29, 1986. The passport also contains: 1) admission stamps into Jamaica on August 9, 1986, December 22, 1986 and August 6, 1987; 2) exit stamps of July 28, 1986, August 17, 1986 and September 7, 1987 from Jamaica; 3) admission stamps into England at Heathrow International Airport on August 18, 1986, and January 18, 1987; 4) an exit stamp of December 22, 1986 from Heathrow International Airport; 5) another exit stamp from Heathrow International Airport; however, the date is indecipherable; and 6) an Entry Certificate dated August 15, 1986 for "employment" to be presented at a United Kingdom port.

The applicant's failure to disclose these absences from the United States is a strong indication that the applicant was not residing in the United States during these periods or may have been outside the United States beyond the period of time allowed by regulation. This further undermines the credibility of the applicant's claim to have continuously resided in the United States since before January 1, 1982, through May 4, 1988. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

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