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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 02 183 62806

Office: NEW YORK

Date: FEB 04 2009

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. The file has 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On January 10, 2007, the 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 denied the application, finding that the applicant failed to submit sufficient evidence to establish her continuous presence in the United States during the statutory period. The director found that the applicant's two absences from the United States created breaks in the her required continuous residence and physical presence.

On appeal, counsel for the applicant asserts that there were emergent reasons for the applicant's absences from the United States and that she was delayed due to unforeseen circumstances.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence 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 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 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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. 245a.12(f). Affidavits that indicate specific, personal knowledge of the applicant's whereabouts during the

relevant time period are given greater weight than fill-in-the-blank affidavits that provide 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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in CSS v. Meese [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," dated September 13, 1990.

On April 1, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On June 28, 2004, 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 and establish 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.

The documentation regarding the applicant's continuous residence from prior to January 1, 1982, through May 4, 1988, consists of a passport issued in New York City and several letters and affidavits.

The passport issued in New York City in 1985 indicates that the applicant was physically present in the United States in 1985 but does not establish her entry in 1981 and does not establish her continuous residence throughout the statutory period.

The affidavit from her sister includes details about the applicant's plans for a trip to the United States in 1981, but does not mention the time thereafter. As such, the affidavit contains minimal details of the applicant's continuous residence in the United States.

Similarly, [REDACTED] provides some details about her travels with the applicant from Colombia to the United States in 1981, but fails to provide sufficient relevant details regarding the circumstances of the applicant's continuous residence during the statutory period. Lacking such relevant detail, the statements can be afforded only minimal weight as evidence of the applicant's continuous residence in the United States for the requisite period.

The statements from [REDACTED] and [REDACTED] can be given minimal weight as evidence of the applicant's entry into the United States prior to January 1, 1982, and of her continuous residence from prior to that date through May 4, 1988. [REDACTED] states the applicant lived in her apartment from July 1981 to November 1984 and [REDACTED] that the applicant lived in his house from 1984 to July 1987. As the applicant's landlord or roommate, [REDACTED] and [REDACTED] fail to submit corroborating evidence of the applicant's residence in the dwelling, such as a lease or rent receipts, and fail to submit evidence to corroborate that they themselves were physically present during the statutory period or that they owned the house where they rented a room to the applicant for several years.

The employment verification letters from [REDACTED] and [REDACTED] can be given minimal evidentiary weight as they fail to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i). Specifically the employers do not provide the applicant's address at the time of employment, show periods of layoff, or declare whether the information was taken from company records, or 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.

Although the applicant has submitted several letters and affidavits in support of her application, she has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The record of proceedings contains other documents, including several residential leases, several employment verification letters, copies of Internal Revenue Service (IRS) tax returns and attachments, and. 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 without inspection in July 1981, and to have resided for the duration of the requisite period in New York. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. The applicant has failed to do so. In this case, her assertions regarding her entry are not supported by sufficient credible evidence in the record.

Furthermore, the applicant's trips outside the United States broke her required continuous residence and physical presence.

According to 8 C.F.R. § 245a.15(c)(1), an applicant for adjustment of status under the LIFE Act shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is

filed, unless the applicant 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 under the LIFE Act must also establish that he or she was continuously physically present in the United States from November 6, 1986, through May 4, 1988. *See* 8 C.F.R. § 245a.16(a). According to 8 C.F.R. § 245a.16(b):

For purposes of this section, 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. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, 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. (Amended 6/4/02; 67 FR 38341)

Determinations are made on a case-by-case basis as to whether a departure which occurred during the regulatory period can be considered brief, casual, and innocent. *See* Memorandum, *Proposed Amendment to Regulatory Definition of "Brief, Casual, and Innocent, as Found in 8 C.F.R. 245a.2(1)(2)*, Office of Executive Associate Commissioner for Operations, July 18, 1991. In evaluating the disruption of continuous physical presence, the following will be considered: the duration of the absence, the purpose of the departure, actions of the alien during the absence, and other relevant factors. *Id.*

The relevant issue under the regulation is not the fact that the applicant's stay was lengthened by complications, but rather whether the applicant, when leaving the United States, reasonably expected to return within the 45 day time limit, *Ruginsky v. INS*, 942 F.2d 13 (1st Cir. 1991).

The applicant has not established that she entered the United States in July 1981, nor has she established that her stay in Colombia in 1987 was lengthened by an emergent reason. She states that she traveled to be with her sick mother in 1987. An individual under these circumstances would reasonably expect to return within 45 days. The applicant does not explain what, if anything, occurred in Colombia after she arrived there, that required her to stay longer than 45 days.

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.

Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 upon documents with minimal probative value, the applicant has

failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, she 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.