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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
MSC 02 240 63719

Office: GARDEN CITY

Date: FEB 17 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 National Benefits Center. If your appeal was sustained, or if the matter 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:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, as required under section 1104(c)(2)(B) and (C) of the LIFE Act.

On appeal, counsel for the applicant submits a brief.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – 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. 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.

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 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 since 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 the applicant submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act) on December 1989. On that application, the applicant indicated that she had entered the United States without inspection on May 6, 1981, had no children, and had been absent from the United States on only one occasion during the requisite time period - from October to November 1987 - in order to travel to Ecuador to visit her sick father.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on May 28, 2002. On that application, the applicant indicated that she had a daughter born in Ecuador in April 1983. On a Form G-325, Biographic Information sheet, filed in connection with the Form I-485, she also indicated that she had resided in Ecuador from 1972 to October 1987.

In a Notice of Intent to Deny (NOID) the Form I-485, the director noted that documentation submitted by the applicant was not credible or amenable to verification, and that there were discrepancies noted with regard to the applicant's claim of only having departed the United States on one occasion in 1987 when, in fact, she had a daughter born in Ecuador in 1983. The applicant was provided 30 days in which to submit additional evidence in support of the application. The applicant failed to respond to the NOID. Therefore, on September 17, 2007, the director denied the application on the basis of the reasons stated in the NOID. The applicant, through counsel, filed her current appeal from that decision on October 17, 2007.

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).

A review of the record reveals that, in an attempt to establish her continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant has provided the following documentation throughout the application process:

Employment Letter:

1. A letter, dated November 29, 1989, from [REDACTED] identified as the president of [REDACTED] in New York, New York, stating that the applicant had been under his employ since 1985.

The employment letter provided does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff, if any; 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.

Letters from Acquaintances:

2. An undated letter from [REDACTED] of Bronx, New York, stating that she had known the applicant for several years and that the applicant took a trip to Ecuador from October to November 1987.
3. A letter, dated November 27, 1989, from [REDACTED] stating that the applicant lived at his residence in New York, New York, from May 1981 until August 1989, paying a monthly rent of \$150.00.
4. A letter, dated November 27, 1989, from [REDACTED] of Bronx, New York, stating that she had known the applicant since about May 1981 – that they lived in the same neighborhood and saw each other often.
5. An un-notarized letter, dated November 29, 1989, from [REDACTED] of New York, New York, stating that the applicant had been living in the United States since 1981.
6. A photocopy of a letter, dated November 28, 1989, from [REDACTED] of New York, New York, stating that he had known the applicant since June 1981.

The letters from acquaintances lack details as to how the affiants first met the applicant, what their relationships with the applicant were, and how frequently and under what circumstances they saw the applicant during the requisite period, and provide little credence to their direct and personal

knowledge of the events and circumstances of the applicant residence in the US throughout the requisite period. As such, the statements can only be afforded only minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period. Furthermore, one of the letters was not notarized, one was a photocopy, and none provided telephone contact numbers for verification.

Other Documentation:

7. A letter, dated May 7, 1990, from [REDACTED], in New York, New York, stating that the applicant had been a patient "since December 28, 1985."
8. Photocopies of the applicant's 1987 and 1988 tax forms, none of which are notarized, certified, signed, or dated.
9. Several unverifiable handwritten receipts.
10. Envelopes addressed to the applicant in the United States that either do not contain postmarks or are post-marked after the requisite time period.

The physician's letter indicates that the applicant was present in the United States in December 1985 but contains no further information as to any other dates that the applicant was seen as a patient. The photocopies of (un-notarized, un-certified, un-signed, un-dated) tax records; unverifiable handwritten receipts; and, un-postmarked envelopes provide little, if any, evidentiary weight or probative value.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, Selective Service card, automobile, contract, and insurance documentation, deeds or mortgage contracts, credible tax receipts, or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). Other than the physician's letter, the documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"). These third-party affidavits lack specific details as to how the affiants knew of the applicant's entry into the United States, and details regarding how often and under what circumstances they had contact with the applicant during the requisite time period.

On appeal, counsel asserts that the documentation submitted by the applicant is verifiable and that when taken together, establishes by a preponderance of the evidence that the applicant resided in the United

States throughout the requisite time period. Counsel concedes on appeal that the applicant was in Ecuador in 1983 when she gave birth to her daughter, but that without further information, it is impossible for the director to state positively that the applicant had not established residence in the United States prior to 1982. Counsel provides no additional documentation in support of the appeal and no further explanation as to the inconsistencies and discrepancies (as noted above in the NOID) in information provided by the applicant on her Forms I-687, G-325, and I-485.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 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 insufficiency in the evidence provided and inconsistencies and discrepancies noted in the record, the AAO determines 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, resided in this country in an unlawful status continuously since that time through May 4, 1988, and maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, she is ineligible for permanent resident status under section 1104 of the LIFE Act.

It is finally noted that the record reflects that the applicant was arrested on February 6, 1991, by the Orange County Police Department and charged with one count each of Larceny and Fraud. In any future proceedings before United States Citizenship and Immigration Services (USCIS), the applicant must provide the final court disposition of this arrest and any other charges against her.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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