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**U.S. Citizenship
and Immigration
Services**

L2

FILE: [REDACTED] Office: NEW YORK Date: FEB 24 2009
MSC 02 211 63523

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).

IN BEHALF OF APPLICANT:
[REDACTED]

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.


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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 asserts the evidence submitted is sufficient to establish the applicant's continuous residence in the United States during the requisite period.

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. Section 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- Envelopes postmarked February 14, 1982, and July 28, 1983, to the address at [REDACTED] Jackson Heights, New York.
- An airbill from Federal Express dated June 20, 1985 and a receipt from New York Language Center dated March 11, 1987.
- Affidavits from [REDACTED], who indicated that the applicant resided in his apartment, [REDACTED] Jackson Heights, New York, from December 17, 1981 to September 15, 1990.
- Affidavits from [REDACTED] who attested to the applicant's absence from the United States from October 20, 1987 to November 14, 1987.
- Affidavits from [REDACTED] of New York, New York, who attested to the applicant's absence from the United States from October 20, 1987 to November 14, 1987 and to the applicant's employment as her housekeeper twice a week from July 1983 to January 1990.
- Affidavits from [REDACTED] and [REDACTED] who attested to the applicant's residence in New York, New York since December 1981. The affiants asserted that they have been acquainted with the applicant from Columbia.
- An affidavit from [REDACTED] and [REDACTED] who attested to the applicant's residence in New York, New York since March 1982, June 1982, and May 1982 respectively. The affiants asserted that they have been acquainted with the applicant from Columbia.
- Affidavits from [REDACTED] formerly [REDACTED] of Elmhurst, New York, who indicated that the applicant had been in her employ as a cleaning lady from December 1981 to June 1983.

On May 4, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of inconsistencies between her testimony, application and supporting documentation. Specifically, at the time of her LIFE interview, the applicant indicated that she: 1) first entered the United States on November 17, 1981 through the San Diego (California) port of entry, flew to New York the same day, and met [REDACTED] where she resided with [REDACTED] throughout the requisite

period. [REDACTED] however, in his affidavit, attested to the applicant's residence in his apartment from December 17, 1981; and 2) had never left the United States since her arrival; however, the applicant indicated on her Form I-687 application an absence during October 1987 and provided affidavits to corroborate this absence.

The applicant was advised that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was advised that the Federal Express airbill raised questions to its authenticity as it indicated that the applicant was "the shipper and showing an address in Colombia with your name as the recipient," that it is not used for international shipments and there was no record with Federal Express regarding the tracking number on the airbill. The applicant was also advised that the postmarked envelopes were inconsistent with the genuine postmarks of the United States Postal Service and therefore lacked probative value.

Counsel, in response, asserted that the applicant has submitted sufficient documents, which were affidavits of circumstances from individuals who were able to testify to the applicant's residence and employment during the requisite period. Counsel asserted that the applicant's "testimony is correct because she never left the United States permanently but for a short period of time (30) days due to a family emergency this absence should be considered a short absence not a contradiction in her story." Counsel provided documents (copies and originals) that were previously provided.

The director, in denying the application, noted that the documents submitted in response to the Notice of Intent to Deny were insufficient to overcome the grounds for denial as she had not submitted any new evidence to support her claim. The director further noted that all the issues outlined in the Notice of Intent to Deny had not been addressed.

Regarding the postmarked envelopes, the director's finding will be withdrawn as the record contains no adverse evidence to support this finding. Whatever resulted from such information whether it consisted of a letter from the post office, or even a specific memorandum made at the time of a telephone call relating in detail the salient points of the conversation, should be incorporated into the record of proceeding.

On appeal, counsel asserts, in pertinent part:

There are no more documents that [the applicant] could send to you at this time. Furthermore, the Service states that our client claimed to have never traveled out of the United States of America, when her original I-687 application in your files shows that she departed from October to November 1987.

In addition, the Services states that a document [the applicant] submitted on behalf of her case from FEDEX dated June 1985 showed her name as the shipper and herself as

recipient, please note that [the applicant] has a sister named [REDACTED] which is included in her original I-687 application.

The U.S. Citizenship and Immigration Services (USCIS) 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, USCIS 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 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, as he has presented inconsistent documents, which undermines her credibility.

The employment affidavits submitted failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i).

Except for the affidavit from [REDACTED] the remaining affiants failed to provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim.

Regarding the recipient's name on the Federal Express airbill, the AAO agrees with counsel's assertion. However, the fact remains that the airbill is not used for international shipping. The airbill specifically indicates, "[u]se this airbill for domestic shipments and for shipments from Puerto Rico to the U.S.A." Counsel and the applicant have not addressed this fact or submitted any evidence disputing it

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 (5th 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.

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