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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: NEW YORK CITY Date: FEB 25 2009

MSC 03 189 61056

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. 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 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 in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that the director failed to give proper weight to the evidence she submitted in support of her claim.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: "An alien shall be regarded as having resided continuously in the United States if *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." (Emphases added.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "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." (Emphasis added.) The regulation further explains that "[b]rief, 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." (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. *See* 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 applicant, a native of Morocco who claims to have lived in the United States since October 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on April 7, 2003. It is noted that the applicant was 14 years old at the time of her claimed arrival to the United States.

In a Notice of Intent to Deny (NOID), dated December 12, 2007, the director indicated that the applicant had not provided sufficient credible evidence to establish that she resided continuously in the United States from before January 1, 1982, through May 4, 1988. The director noted that the address provided by the applicant of her residence in the United States during the 1980s started from 1983. The applicant did not provide any address in 1981 or 1982, thereby calling into question the veracity of her claim that she has resided in the United States from 1981. The applicant was granted 30 days to submit additional evidence.

The applicant filed a response and on January 17, 2008, the director issued a Notice of Decision denying the application.

On appeal, the applicant asserts that the director failed to give due weight to the evidence submitted into record. The applicant submitted no additional documentation with the appeal.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of her claim that she entered the United States before January 1, 1982 and resided continuously in the country in an unlawful manner through the period required for legalization under the LIFE Act consists of the following:

- An affidavit by dated May 1, 2004, stating that she has known the applicant since 1985 and that they met at a mutual friend's party.
- A copy of an English translation of the applicant's National Identity card by the Consulate General of Morocco in New York City, indicating the validity of the identity card from January 18, 1985 to January 27, 1995.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988, such as school or hospital records which is reasonable to expect from a child of 14 in 1981.

The AAO notes that the applicant claimed that she entered the United States in 1981 and resided continuously in the country through May 4, 1988, except for two brief trips outside the United States from August 2, 1982 to August 28, 1982; and from November 18, 1988 to December 21, 1988, however, there is documentation in the record that casts considerable doubt on the applicant's claimed entry into the United States in 1981. For example, on the Form I-687 (application for status as a temporary resident) she filed in February 1991, the applicant listed her residential address in the United States from 1983. The applicant did not provide any information on her residential address(es) in 1981 and 1982. This omission is very critical given the fact that the applicant was only 14 years old when she allegedly entered the United States in October 1981. Also on the same Form I-687, the applicant listed three employers in the United States during the statutory period for LIFE legalization, starting from 1984 through 1990, but provided no documentation to support her claim. A copy of the English translation of the

applicant's identity card by the Consulate general of Morocco suggests that the identity card was issued in Morocco on January 28, 1985. In view of the fact that the applicant did not indicate that she traveled to Morocco in1985, it is reasonable to conclude that the applicant was in Morocco in 1985 and undermines her claim of continuous residence in the United States from before January 1, 1982 through May 4, 1988. This also casts doubt on whether the applicant in fact entered the United States on October 1981. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The affidavit by provide few details about the applicant's life in the United States, such as where she worked or resided during the 1980s and the nature and frequency of her interaction with the applicant over the years. Nor was the affidavit accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiant's personal relationship with the applicant in the United States during the 1980s. In fact, the affiant did not provide any information about the applicant prior to 1985. In view of these substantive shortcomings, the AAO finds that the affidavit has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Given the paucity of evidence in the record, AAO finds that the applicant has failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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