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

L2



FILE: [REDACTED]
MSC 02 215 60606

Office: LOS ANGELES

Date: **FEB 27 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:



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.

A handwritten signature in black ink, appearing to read "J. Grissom".

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant asserts that the evidence demonstrates the applicant's eligibility under the LIFE Act. Counsel submits additional evidence on appeal.

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 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.

In the Notice of Intent to Deny (NOID), dated August 21, 2007, the director stated that the applicant failed to submit evidence demonstrating her continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted several affidavits attesting to the applicant's residence during the requisite period; however, the record reflected that the applicant testified at her Deportation Proceedings (under [REDACTED] before an Immigration Judge that she first entered the United States in February 1985. The director also noted that the applicant indicated on her Application for Cancellation of Removal (Form EOIR 42B) that she had resided in the United States since 1985. The director determined that the applicant could not establish the requisite continuous residence. The director granted the applicant thirty (30) days to submit additional evidence.

In response to the NOID, counsel for the applicant states that the applicant first entered the United States in 1979, and that the applicant did not elaborate during her deportation proceedings that her first entry was in 1979 because it was "irrelevant to her case."

In the Notice of Decision, dated October 22, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but failed to overcome the reasons for denial as stated in the NOID.

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. The applicant submitted various items, including letters and affidavits, as evidence to support her Form I-485 application. **The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.**

The record reflects that the applicant submitted numerous affidavits from individuals attesting to the applicant's residence in the United States during the requisite period. These affidavits, however, are questionable, and are therefore not probative. As noted above, at the applicant's deportation proceedings, the applicant stated that she first entered the United States in February 1985. On her Application for Cancellation of Removal (Form EOIR 42B) she stated that she had resided in the United States since 1985. The applicant also testified at her asylum interview that she first entered the United States in February 1985. It is also noted that the applicant's passport was issued in Mexico on

December 26, 1984, and she was issued a B-2 non-immigrant visa by the United States consular office in Guadalajara, Mexico, on January 23, 1985. Although the applicant states on appeal that she entered the United States in 1979, the evidence of record, including her sworn testimony before an immigration judge, indicates that she first entered the United States on February 11, 1985, after the beginning of the requisite period.

Indications are that the applicant has provided false documentation in support of her LIFE application, and/or she gave false testimony at her removal hearing. At this late stage, the applicant is attempting to change the record of evidence. However, the applicant cannot simply change her testimony whenever it suits her. The record, as it stands, indicates her initial entry into the United States was on February 11, 1985.

With the appeal, counsel submits a photocopy of a Form I-862, Notice to Appear, dated May 21, 1997, which has bears a hand-written note stating "1980-1989 Date of entry change agreed to by service." The record of proceedings, however, does not contain any such modification to the Form I-862. Neither are there any indications in the record that the service agreed to any date of entry. Also, contrary to counsel assertion, the Immigration Judge stated in the Decision of the Immigration Judge in Removal Proceedings, dated April 16, 1999, that the applicant entered at San Ysidro, California, on February 11, 1985.

The applicant claims that she has resided continuously in the United States since prior to January 1, 1982, and indicated on her Form I-687 application that since her first entry into the United States, she departed once, to Mexico, in September 1989, to visit family, and returned in October 1987. As noted above, however, the record reflects that the applicant's passport was issued in Guadalajara, Mexico, on December 26, 1984; she was issued a non-immigrant visa in Guadalajara, Mexico, on January 23, 1985; and, she was admitted at into the United States with a B-2 visa at San Ysidro, California, on February 11, 1985.

In addition, there are discrepancies in the documentation submitted by the applicant. For example, the applicant submitted a Student Identification Card from Van Nuys Community Adult School, which appears to have been altered. The identification card indicates that it is for the school year 1984-1985, but does not have a photograph of the applicant. It is noted that the applicant, who was born on August 28, 1966, was only twelve years old in February 1979 when she claimed that she entered the United States. It is reasonable to expect that the applicant would be able to provide reliable primary and/or secondary school records. However, no such documentation was provided. As additional examples, a Certificate of Confirmation from the Church of Saint Thomas the Apostle, dated December 31, 1981, has various typographical errors. The bank receipts do not show the applicant's name, therefore, they are of no probative value.

Contrary to counsel's assertion, the applicant has failed to overcome the discrepancies in the record. The above discrepancies cast considerable doubt on whether the documentation, including affidavits, and letters, the applicant submitted to establish her continuous residence are genuine. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that she continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 that are not relevant and have minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

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.