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U.S. Citizenship
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FILE:

MSC 02 248 62893

Office: HOUSTON

Date:

MAR 04 2009

IN RE:

Applicant:

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. 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.

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, reopened, and again denied by the Director, Houston, Texas. The matter 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) of the LIFE Act.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

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).

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 contains a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), signed by the applicant on October 4, 1990. The applicant, a native and citizen of Colombia, claimed to have initially entered the United States without inspection in August 1981, and to have departed the United States on two occasions during the requisite time period – from December 1983 to January 1984 (to visit family in Colombia), and from June 1987 to July 1987 (to visit family and parents in Colombia).

In support of the Form I-687, the applicant submitted: photocopies of receipts, dated in 1986 and 1987; photocopies of envelopes mailed to the applicant in the United States, postmarked in 1983 and 1985; a photocopy of a physician's prescription dated in 1984; and, a letter from [REDACTED] stating that the applicant made a trip to Colombia in 1987 due to a family matter and returned in July 1987. The applicant also submitted employment letters from: [REDACTED] stating that the applicant was employed by her from November 1981 through November 1988, and had lived with her in her home during the periods November 1981 through December 1984, and February 1987 through November 1988; and, from [REDACTED] stating that the applicant lived with and was employed in his home from January 1985 through January 1987.

The applicant filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on June 5, 2002. In support of the Form I-485, the applicant

submitted the following documentation in an attempt to establish her continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988:

Similar affidavits from [REDACTED] (last name illegible) and [REDACTED] (last name illegible) stating that they had known the applicant since 1981.

- Similar un-notarized, un-dated letters from [REDACTED] and [REDACTED]. Ms. [REDACTED] states that she met the applicant as a co-worker when they cleaned houses together in January or February 1981 – that she specifically recalls the date because they had just been through the Christmas holidays. She further states that they became friends and have stayed in contact, seeing each other at least twice a week, and occasionally work together. Mr. [REDACTED] states that he met the applicant in 1981 when they worked with the same maintenance company, became friends, and have kept in touch since. He further states that he specifically recalls that he met the applicant very early in the 1981 because the weather was cold at that time of year.
- An affidavit from [REDACTED] stating he had known the applicant since 1981- that he met her when she was working at [REDACTED] house.
- An affidavit [REDACTED], stating that he had known the applicant since 1982 – that he met her through common friends at family parties and he sees her on a regular basis.

The director initially denied the application on July 23, 2004, reopened the proceedings on June 2, 2005, and again denied the application on March 12, 2007, on the basis that the applicant had failed to meet her burden of proof to establish her entry into the United States prior to January 1, 1982, and continuous unlawful residence in the United States since that date through May 4, 1988. The director noted that none of the affiants, other than [REDACTED] had provided their telephone numbers for contact, and that attempts to contact [REDACTED] were unsuccessful. The director also noted that although [REDACTED] stated that he worked with the applicant for the same maintenance company when they met in 1981, documentation provided by the applicant from [REDACTED] (in connection with the applicant's Form I-687) indicated that the applicant lived in her home and worked as a maid at that time, and that the applicant never claimed to have been employed by a maintenance company. The AAO also notes that although the applicant claims that she initially entered the United States in August 1981, both [REDACTED] and [REDACTED] claimed to her presence in the United States since early 1981.

The applicant, through counsel, filed an appeal from the director's denial decision on April 4, 2007. On appeal, counsel asserts that the director's decision is erroneous, that the application cannot be denied solely on the grounds that only affidavits were submitted, the applicant may meet her burden of proof through the production of secondary evidence, the director does not state why attempts to contact the witnesses were unsuccessful, and that the perceived discrepancies are "trivial and grasping at straws."

Counsel's assertions are not persuasive. **As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.** 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 throughout the requisite time period. Furthermore, attempts to contact the affiants, where telephone numbers were provided, were unsuccessful.

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 paucity of verifiable documentation submitted and inconsistencies 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.

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