

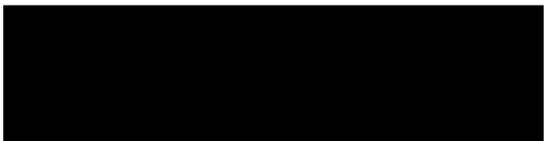


U.S. Citizenship
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Services

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FILE: [REDACTED]
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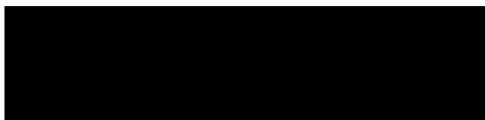
Office: LOS ANGELES

Date: **NOV 18 2009**

IN RE: Applicant: [REDACTED]

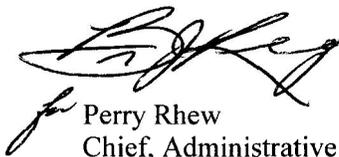
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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.


Perry Rhew
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 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 requested a copy of the record of proceedings and an extension of time in which to supplement the appeal. Counsel's request was processed on July 9, 2009. Subsequently, counsel put forth a brief disputing the director's findings.

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 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. 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:

- An affidavit from [REDACTED] who attested to the applicant's residences in Long Beach, California from 1981 to 1982 and since 1982 in Huntington Park, California.
- An affidavit from [REDACTED], who indicated that he has known the applicant for five years and attested to the applicant's residence in Huntington Park, California since 1985.
An affidavit from [REDACTED], who indicated that he was a neighbor of the applicant and attested to the applicant's residence in Huntington Park, California since 1982.
An affidavit notarized May 3, 1990, from [REDACTED] who indicated that the applicant has been in her employ since January 1986. The affiant indicated that the applicant is very dependable and good with children.
- Affidavits from [REDACTED] who indicated that the applicant was in his employ as a babysitter from December 1981 to January 1986 and that the applicant was a tenant from December 1981 to November 30, 1984 at [REDACTED].
- An affidavit from a brother, [REDACTED] who indicated that he has been acquainted with the applicant in the United States since November 1981.
- An affidavit notarized May 3, 1990, from a sister, [REDACTED], who indicated that the applicant resided with her from December 1984 to March 31, 1988. The affiant also indicated that the applicant has resided with her since April 1, 1988 at [REDACTED].
- A receipt dated June 17, 1981 from [REDACTED].
- Several rent receipts dated from December 1, 1984 through March 1, 1988 from [REDACTED] for premises at [REDACTED], and a rent receipt dated April 1, 1988 from [REDACTED] for premises at [REDACTED].
- An affidavit from [REDACTED] who attested to the applicant's residence in Los Angeles, California since 1980. The affiant indicated that he met the applicant through a cousin of his that knew the applicant's family. The affiant indicated that he has been in constant communication with the applicant since that time.

On January 4, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that there were inconsistencies between her application, testimony and supporting documents. Specifically, the addresses listed as the applicant's places of residence on her Form I-687 application and supporting documents did not coincide with the places of residence given at the time of her LIFE interview. In addition, the applicant, at the time of LIFE interview, indicated that she

had no absences from the United States since her initial entry; however, she claimed on her Form I-687 application to have departed in 1986 and 1987. The applicant was advised that she had not submitted sufficient, credible documentation of entrance as a foundation on which affidavits may stand as evidence of continuous residence. The applicant was also advised that she had failed to provide documentation establishing her physical presence in the United States from November 6, 1986 to May 4, 1988.

Counsel, in response, asserted that the applicant was confused by the questions that required her to recall events from 15 to 20 years ago. Counsel contended that his assessment of the applicant is she is unsophisticated and has a poor memory. In regards to the four-year gap from 1984 to 1988, counsel asserted that the Form I-687 application contained an error. Counsel indicated that none of the absences added to more than 180 days in the aggregate. Counsel submitted copies of documents that were initially provided along with:

- A declaration from the applicant who reaffirmed her November 29, 1981 entry into the United States, her employment with [REDACTED] as a babysitter, and her residence with [REDACTED] from 1981 to 1984. The applicant asserted she then resided in Los Angeles at [REDACTED] from December 1984 to December 1988. The applicant asserted that she resided at the [REDACTED] address until “December 1988, not December of 1984 as it states on my amnesty application.” The applicant asserts that the individual who prepared the Form I-687 application made a mistake regarding the period of time she resided at this address. The applicant also reaffirmed her employment as a babysitter with [REDACTED] from January 1986 to October 1988. The applicant asserted that she began attending San Matias Church in Huntington Park in 1985 and also attended English as a Second Language classes for about three months starting in November 1986.
- A declaration from [REDACTED], who indicated that in 1990 she and the applicant hired the services of [REDACTED] in an effort to adjust their legal residency. At the time of their 1990 interview with the legacy Immigration and Naturalization Service, their entire package was returned to [REDACTED] “who was maintaining possession of our documents during the entire time our amnesty case was pending.” The affiant asserted that she and the applicant would telephone or visit the preparers’ office twice a year and were always told by [REDACTED] that their applications were still pending. In 1998, [REDACTED] became ill and stopped working at the office; however, neither the preparer’s children nor the coworkers “seemed to know the whereabouts of our file.” The affiant asserted that she has tried contacting the manager and the landlady of the building where they used to reside during the qualifying period; however, they are both deceased.
- An additional affidavit from [REDACTED] who indicated that he has known the applicant December 1981 as the applicant worked for his family as a babysitter and attested to the applicant’s moral character. The affiant indicated that he has remained friends with the applicant since that time.

- An affidavit from [REDACTED], who indicated that she has known the applicant since August 1983. The affiant indicated that she was a neighbor of the applicant in Huntington Park and remained a close friend of the applicant since that time.
- An additional affidavit from [REDACTED] who indicated that she has known the applicant since January 1986 as she worked for her as a babysitter through 1988. The affiant attested to the applicant's residence in Huntington Park, California during this period.
- An affidavit from [REDACTED] who indicated that he has known the applicant since June 1986 and has remained good friends with the applicant since that time. The affiant indicated he met the applicant at Teatro Blanquita of East L.A. where he was an actor.
- An affidavit from [REDACTED] who indicated that she met the applicant in December 1986 at San Matias Church in Huntington Park. The affiant indicated that she and the applicant used to attend Sunday mass for many years.

The director, in denying the application, noted that the additional documents did not overcome the grounds for denial.

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 should be analyzed to determine 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 and counsel 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 she has presented contradictory and inconsistent documents, which undermines her credibility.

The affidavit from [REDACTED] raises questions to its authenticity as the affiant claimed to have been in constant communication with the applicant in the United States since 1980. However, the applicant claimed on her application to have first entered the United States on November 29, 1981.

The receipt dated June 17, 1981 from [REDACTED] appears to have been utilized in a fraudulent manner in an attempt to support the applicant's claim of residence in the United States

prior to January 1, 1982. The applicant's sister indicated in her declaration that she and the applicant did not hire the services of this entity until 1990, and the applicant claimed on her application that she first entered the United States on November 29, 1981.

The affidavit from [REDACTED] also raises questions to its authenticity as the applicant did not claim on her Form I-687 application to have been affiliated with any religious organization during the requisite period.

[REDACTED] in his affidavit, attested to the applicant's residence in Long Beach from 1981 to 1982 and in Huntington Park since 1982. [REDACTED] in his affidavit, attested to the applicant's residence in Huntington Park since 1982. [REDACTED] however, in his initial affidavit, attested to the applicant's residence in Los Angeles from December 1981 to November 1984. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statements from any of the affiants have been submitted to resolve the contradicting affidavits.

[REDACTED] indicated that he has been acquainted with the applicant in the United States since November 1981, but failed to provide the applicant's place of residence and any details regarding the basis for his 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 the claim.

The affidavits from the remaining affiants did not attest to the applicant's residence in the United States prior to 1983.

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).

On appeal, counsel asserts that the application of [REDACTED] has been granted and that the affiant used the same evidence to support her application that was deemed insufficient in the applicant's case.

If the application of [REDACTED] was approved based on the same unsupported and contradictory assertions that are contained in the instant case, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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.