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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] MSC 02 243 61553

Office: HOUSTON

Date: **OCT 05 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:

[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, Houston. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant did not establish that she continuously resided in the United States for the duration of the requisite period.

On appeal, counsel states the director erred in finding that the applicant had not adequately rebutted the Notice of Intent to Deny previously issued, when her rebuttal carefully and fully addressed each point the director identified as a basis for denial. No further documentation is provided on appeal. Counsel also states that she would submit a brief and/or evidence to the AAO after receipt of the Record of Proceedings (ROP). The record shows the applicant's Freedom of Information and Privacy Acts request for the ROP was processed and responded to on April 6, 2009. Additionally, counsel stated she would submit a brief to the AAO within 30 days; however, she has not done so. Therefore, the record is considered complete.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he 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 pertinent evidence in the record is described below.

1. A notarized “Statement of Landlord” from [REDACTED] who indicates that he rented a property at [REDACTED] from May 1981 to August 1986 and that the applicant lived with her at that residence.
2. A notarized “Statement of Landlord” from [REDACTED] who indicates that he rented a property at [REDACTED] and [REDACTED] from August 1986 to December 15, 1990 and that the applicant lived with him at that residence.
3. The applicant’s receipts dated July 8, 1983 and December 14, 1989 from Giant Express, Inc. showing she sent articles from Texas to persons in Mexico.
4. The applicant’s premise work invoice from Southwestern Bell showing she received telephone installation services at an address in Texas on August 21, 1986.

5. The applicant's patient statement showing she was admitted on April 6, 1987 to a hospital in the Harris County, Texas, hospital district.
6. The applicant's appointment notice dated July 21, 1987 from The Good Neighbor Healthcare Center in Houston, Texas.
7. The applicant's U.S. Postal Service Form 3806, Receipt for Registered Mail, postmarked June 27, 1987 showing she sent mail to a person in Mexico from Houston, Texas.
8. A "Declaration of Employer for Domestic and Childcare Workers" from [REDACTED] who states the applicant worked for her from January 1988 to July 1990.

The statements from [REDACTED] (Item # 1 above) and [REDACTED] (Item # 2) indicate that the applicant resided in Houston, Texas, from May 1981 to December 15, 1990. However, on her Form G-325A, Biographic Information, signed on November 10, 1988, the applicant stated that she resided in Fort Lauderdale, Florida, from December 1985 until November 10, 1988. On her Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, signed on October 15, 1990, the applicant stated she resided at [REDACTED] in Houston, Texas, from May 1981 to August 1986. The receipt dated December 14, 1989 (Item # 3) is discounted because it shows the article sent by the applicant on December 14, 1989 was received in Mexico on July 30, 1986, more than three years before it was purportedly sent. Based on the applicant's premise work invoice, patient statement, appointment notice and U.S. Postal Service Form 3806 (Items # 4 through #7), the AAO accepts that she was present in the United States for a part of the requisite period since August 1986.

Based on the foregoing analysis of the evidence, the AAO concludes 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. 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.