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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 246 65791

Office: HOUSTON

Date:

**FEB 25 2010**

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).

IN 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.

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, Houston, Texas, 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 puts 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).

“Continuous residence” is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

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 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.

On March 9, 1998, the applicant presented herself for inspection in Houston, Texas. In a sworn statement taken on the same date, the applicant admitted that she had always entered the United States legally and that she started working illegally in 1984. The applicant also indicated she attended kindergarten in the United States, but she did not have any records.

At the time of her LIFE interview on July 28, 2003, the applicant indicated that she entered the United States without inspection in May 1981 and resided with a friend for approximately eight to nine years. The applicant further indicated that she was employed at Champion Windows from 1981 to 1983 and at Sunrise Cleaners from 1984 to 1990. The applicant indicated that she only entered legally into the United States when her father was alive.<sup>1</sup>

The director’s determination that the applicant had been absent from the United States for over 45 days was based on the applicant’s own testimony at the time of her LIFE interview. The applicant indicated that she departed the United States for Mexico on December 8, 1983 to give birth to her child and reentered without inspection on February 14, 1984. The applicant indicated that she left her newborn along with her other children in Mexico with her mother-in-law, and as of the date of the interview, all her children still resided in Mexico.

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 indicated that he was a coworker of the applicant while at Champion Window. The affiant indicated that he saw the applicant everyday until she was laid off in 1983 due to her pregnancy. The affiant indicated that he saw the applicant again once when she returned from Mexico.

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<sup>1</sup> The applicant indicated on her Form I-687 application that her father passed away in 1964.

- An affidavit from [REDACTED] who indicated that he met the applicant at the [REDACTED] at [REDACTED] in May 1981. The affiant indicated that he was a neighbor of the applicant at the apartment complex and saw the applicant every day until she moved.
- An affidavit dated April 27, 1987, from [REDACTED] manufacturing [REDACTED] in Houston, Texas, who attested to the applicant's employment from July 1981 to December 1983.
- A letter dated December 11, 1990, from [REDACTED] and Laundry, who indicated that the applicant has been in his employ since March 1984.

On October 23, 2003, the director issued a Notice of Intent to Deny, which advised the applicant that at the time of her interview, the applicant was unable to recall the affiants and her relationship with them. The applicant was advised that her sworn statement taken on March 9, 1998 contradicted the information she provided at the time of her interview on July 28, 2003. The director also advised the applicant that due to her absence from the United States from December 8, 1983 to February 14, 1984, she had failed to establish continuous residence in the United States, and that she had not provided any evidence of an emergent reason for her delay.

Counsel, in response, submitted an affidavit from the applicant, who provided explanations for the discrepancies outlined in the director's notice. Counsel asserted that the applicant has submitted sufficient proof to establish continuous residence in the United States during the requisite period. The applicant, in her affidavit, indicated, in pertinent part:

During my interview with the Service I stated under oath I first left the U.S. to go to Mexico on or about 12/8/83 to give birth and I reentered the U.S. on 2/14/84. I could not remember the exact date I came in to the United States, but on the Form I-687 I filled out and signed in 1990 I stated I entered the U.S. in Jan. of 1984. I talked to some friends who helped me after I gave birth twenty years ago. I had a cesarean section in Mexico and I returned to the U.S. I was in a lot of pain and alone, and my friends helped me during this difficult time. I did not exceed the 45-day limit. I returned within about 30 days or less.

In regards to her statement taken in 1998, the applicant indicated, in pertinent part:

I was returning to the U.S. after a 3-day emotional visit to Mexico – I helped my daughter bury my grandson. I had not slept in 3 days and I was extremely heartbroken. I am not inconsistent.” The applicant indicated, “I always entered legally when I came to the U.S. States with my parents and I entered the U.S. without inspection in 1981.”

In regards to her inconsistent dates of employment at Champion Window, Inc. the applicant indicated that she “simply forgot” that she worked at Champion Windows 17 years before. The applicant indicated, in pertinent part:

As I mentioned above, on the day I was questioned by the Service in 1998, I told the Service that I started working illegally in the U.S. in 1984. I was in a sleep deprived emotional state and the only thing I could remember at the time was my last job at Sunrise Cleaners. Sunrise Cleaners was the last job I had at the time.

In regards to the affidavits, the applicant indicated, “[t]hese affidavits were done in 1993 – ten years ago. I just couldn’t remember – it was not intentional.” The applicant indicated that she has been diagnosed with hypothyroidism over a year ago and was told by her physician that she probably had this condition for many years before.

The applicant submitted a letter dated November 24, 2003, from [REDACTED] a doctor at E.A. Squatty Lyons Health Center in Humble, Texas, who indicated that the applicant has been a patient since April 17, 2002, and was diagnosed with hypothyroidism on June 9, 2002. The doctor indicated that in the untreated stages of this illness, a person’s memory may be impaired.

The director determined that the applicant’s response was not sufficient to overcome the grounds for denial, and on January 5 2004, the director denied the application.

On appeal, counsel submits copies of documents that were previously provided along with a copy of the death certificate of the applicant’s grandson which reflects a date of death of March 6, 1998. Counsel asserts that it is completely reasonable to believe that the applicant was emotionally distraught at the time of her interview on March 9, 1998.

Counsel also submits an affidavit from [REDACTED] who indicated that she met the applicant in 1982 and became close friends. The affiant attested to the applicant’s departure in December 1983 to Mexico to have her child. The affiant indicated, “[the applicant] returned later in December of 1983, and called to let me know of her return, I invited her to celebrate the New Year with me, she was alone and still recovering from her c-section. In January of 1984 she was excited about the arrival of her mother in law and her son.”

Counsel asserts that the applicant suffers from hypothyroidism which causes memory loss and this is reason why the applicant could not recall the affiants or her relationship to them.

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 additional contradictory and inconsistent documentation, which undermines her credibility.

The affidavit from [REDACTED] raises questions to its authenticity as the affiant indicated that the applicant returned to the United States in December 1983, and was invited to spend New Year's Eve with her. However, the applicant has indicated that she returned to the United States in January 1984. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from [REDACTED] has been submitted to resolve her contradicting affidavit or to corroborate the applicant's statement.

The applicant had not provided sufficient evidence to substantiate her claim of memory loss. The only evidence provided is a letter from [REDACTED], who indicated that hypothyroidism *may* impair a person's memory if remained untreated. The record does not indicate that the applicant was diagnosis with memory loss.

The employment letter from [REDACTED] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the affiant also failed to 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.

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).

[REDACTED] and [REDACTED]'s statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence

standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, 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.

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 record reflects that on March 14, 2005, the applicant filed a Form I-687 Application for Status as a Temporary Resident under section 245A of the Immigration and Nationality Act (the Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. On the Form I-687, the applicant claimed three departures from the United States during the requisite period; December 1983 to give birth to her child; January 1988 to visit her grandfather who was ill; and March 1988 because her grandfather had passed away.

On her initial Form I-687 application and Form for Determination of Class Membership signed October 23, 1990, the applicant claimed to have only departed the United States in December 1983 and January 1988. The applicant indicated on her Form I-687 that she went to Mexico in January 1988 because her grandfather was very ill, "unfortunately when me and my mother get there he was already dead."

In response to a Form I-72 dated November 29, 2006, the applicant submitted a copy of her grandfather's death certificate which reflects that he passed away on February 25, 1988.

These inconsistencies further raise serious questions regarding the applicant's absences from the United States. The applicant's failure to disclose her March 1988 absence from the United States on her initial Form I-687 application is a strong indication that the applicant was not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation. This further undermines the credibility of the applicant's claim to have continuously resided in the United States since before January 1, 1982, through May 4, 1988.

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