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U.S. Citizenship and Immigration services
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: BALTIMORE Date: JAN 14 2010

MSC 02 061 62341
BAL 08 160 50005 – APPEAL

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.

Perry J. 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 in Baltimore, Maryland. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant entered the United States before January 1, 1982, resided continuously in an unlawful status until December 1981, that the applicant briefly left the United States in December 1981, that she returned to the United States on January 1, 1982 and was admitted as an F-1 student. Counsel further asserts that the applicant violated her status as a student because she attended a University other than the one indicated on the F-1 visa and that she engaged in employment without authorization. Counsel contends that these actions placed the applicant in an unlawful status and that she is eligible to adjust status under the LIFE Act.

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 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 applicant, a native of Cameroon who claims to have lived in the United States since January 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on November 30, 2001.

In a Notice of Intent to Deny (NOID), dated January 4, 2008, the director indicated that the documentation submitted by the applicant is insufficient to establish her entry into the United States before January 1, 1982, and her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director noted that the applicant was admitted into the United States on January 1, 1982 with a valid F-1 student visa, that she attended college in compliance with her student status and therefore was not in an unlawful status prior to January 1, 1982 and for the duration of her student status. The applicant was granted 30 days to submit rebuttal or additional evidence.

The applicant timely responded to the NOID stating "I do have proper documentation to support my unlawful residence here in the U.S. for 99 percent of the period under the LIFE legalization.

Please reconsider my application for permanent residence given the above documentation." The applicant submitted copies of documents previous submitted in the record.

On May 2, 2008, the director issued a Notice of Decision denying the application on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the applicant entered the United States before January 1, 1982, resided continuously in an unlawful status until December 1981, that the applicant briefly left the United States in December 1981, that she returned to the United States on January 1, 1982 and was admitted as an F-1 student. Counsel further asserts that the applicant violated her status as a student because she attended a University other than the one indicated on the F-1 visa and that she engaged in employment without authorization. Counsel contends that these actions placed the applicant in an unlawful status and that she is eligible to adjust status under the LIFE Act.

Counsel asserts that the applicant violated her student status by engaging in an unauthorized employment, counsel however did not provide any documentation in support of his assertion. Contrary to the assertion of counsel, the record from the Social Security Administration (SSA) clearly shows that the applicant started earning income in the United States from 1984. Therefore, the record clearly shows that the applicant's employment in the United States began in 1984 and not in 1982 as claimed by counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate 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. Here, the applicant has failed to meet her burden.

The record reflects that the applicant was admitted into the United States on January 1, 1982 with a valid F-1 student visa. The applicant proceeded to attend Benjamin Franklin School of Accounting in Washington, DC, from 1982 and graduated from the school in compliance with her student status. The applicant contends however, that she obtained an F-1 visa to attend Grandview College in Des Moines, Iowa, but that she attended Benjamin Franklin College

instead, that her attending a different school constituted a violation of her student visa and placed her in an unlawful status. The record however, indicates otherwise. While the notation on the visa was for Grandview College, the record shows that the applicant had a valid Form I-20 for both Grandview and Benjamin Franklin University. The applicant attended Benjamin Franklin upon entry and therefore did not violate her student status. Thus, the applicant's claim is unfounded. Even if the applicant violated her student status in 1982, the applicant still has to establish her unlawful residence in the United States prior to January 1, 1982.

The applicant claims that she illegally entered the United States for the first time in January 1981, resided continuously in the country until November 1981, that she left the United States in November 1981, and that she returned to the United States on January 1, 1982 with an F-1 student visa. The applicant did not submit any objective documentation or credible evidence to establish her entry into the United States in January 1981. In the absence of any objective evidence pointing to the applicant's unlawful entry and residence in the United States before January 1, 1982, the applicant's documented lawful entry on January 1, 1982, is the first time the applicant entered the United States.

The documentation submitted by the applicant in support of her claim that she entered the United States before January 1, 1982, and resided continuously in the county in an unlawful status through May 4, 1988, consists of the following:

An undated "To Whom it May Concern" letter from [redacted], who identified himself as [redacted] Washington, D.C. and Metropolitan Area, stating that the applicant had been a registered member of the association since her arrival in 1981.

- An affidavit sworn to by [redacted] on September 19, 2001, attesting that the applicant was employed as a babysitter from March to November 1981 and from January to March 1982.

- An affidavit sworn to on October 5, 2001 by [redacted], attesting that she has known the applicant in the United States since 1981, and that she spoke to her numerous times when she came to the United States in January 1 1981.

Two photocopied envelopes addressed to the applicant at the addresses she claimed in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The AAO notes that the applicant was admitted into the United States on January 1, 1982 with a validly issued F-1 student visa, and will accept documents submitted by the applicant in support of her residence in the United States from 1982 as credible evidence of the applicant's continuous residence in the United States from January 1982 onwards. The AAO will focus its

review of documents in the record attesting to the applicant's residence in the United States prior to January 1, 1982.

The letter from [redacted] Washington, D.C. and Metropolitan Area does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter did provide the applicant's specific dates f membership, did not state the address where the applicant resided during the period of membership or at any other time during the 1980s, did not indicate how and when the author met the applicant, and whether his information about the applicant was based on the author's personal knowledge, the organizational records, or hearsay. Since the letter did not comply with sub-parts (C), (D), (F)and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. The letter is not persuasive evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the county in an unlawful through May 4, 1988.

The photocopied envelope addressed to the applicant at [redacted] has an illegible postmark and unable to discern when the envelope was mailed. The photocopied envelope addressed to the applicant at [redacted] bearing a postmark date that appears to read "Oct 81," does not appear to be genuine because the applicant indicated on the Form I-687 that she resided at that Alexandria, Virginia, address from August 1986 to September 1989. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). None of the envelopes bear a United States Postal Service marking to show that the envelopes were processed in the United States before delivery to the applicant. In view of the deficiencies and possible fraud, the envelopes have little probative value. They are not credible evidence of the applicant's residence in the United States prior to January 1, 1982.

As for the affidavits in the record from individuals who claim to have employed or otherwise known the applicant in the United States during the 1980s, they have minimalist formats with very few details about the applicant's life in the United States and the nature and extent of their interactions with the applicant over the years. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s. The affidavit by [redacted] attests that she was aware of the applicant's residence in the United States but did not provide specifics about how and when she met the applicant, and for how long. The affidavit clearly shows that [redacted] did not have a direct personal knowledge of the events and circumstances of the applicant's residency in the United States during the 1980s.

[redacted] claims that she employed the applicant as a babysitter from March 1981 to November 1981, and again from January 1982 to March 1982. Neither [redacted] nor the applicant submitted any documentation such as copies of pay checks, or tax records to establish that the applicant was employed during the periods indicated. Most importantly, however, the applicant did not claim [redacted] as any of her employers in the United States on the Form I-687 (application for status as a temporary resident) she filed on June 9, 2005. Additionally, the copy of the SSA statement in the record shows that the applicant began earning income in the United States from 1984. None of the affiants submitted documentation to establish their identities and residence in the United States during the 1980s.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. For all the reasons discussed above, the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Although the applicant has provided sufficient credible evidence of her residence in the United States from January 1, 1982, the applicant has failed to provide sufficient credible evidence to establish by a preponderance of the evidence her continuous unlawful residence in the country through the requisite period. Thus, the applicant has failed to establish that she entered the United States before January 1, 1982, and resided continuously in an unlawful status in the country from before January 1, 1982 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.

The appeal will be dismissed, and the application denied.

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