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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 135 60045

Office: MIAMI

Date:

MAR 16 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).

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.

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, Miami, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that she resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserted that the submitted evidence proves that the applicant has resided continuously in unlawful status in the United States since prior to January 1, 1982, through May 4, 1988. Counsel requested a copy of the Record of Proceedings (ROP) under the Freedom of Information Act (FOIA). Counsel stated that a brief and/or additional evidence would be submitted after receipt of the ROP. The record reflects that the request was completed on August 6, 2009.¹ Counsel subsequently filed a brief with additional evidence; therefore, the record will be considered complete. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.²

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 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 through May 4, 1988. *See* § 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 and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own

¹ NRC2008050533.

² 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).

testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

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.* at 80. 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 or petitioner 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).

On February 12, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The relevant documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of attestations from affidavits from five individuals claiming to know the applicant during the requisite period. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains declarations from [REDACTED] and [REDACTED] at Saint Louis Catholic Church. Both declarants state that the applicant has been a registered member since 1981. The declarations do not conform to regulatory standards for letters from churches as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The declarants fail to state the address where the applicant resided during membership period and to establish how the author knows the applicant. Lacking relevant details, the declarations provide minimal probative value as evidence in support of the applicant's claim. In addition, the record contains a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act). In her Form I-687, at Question # 34, where asked to list all affiliations or

associations with clubs, organizations, churches, unions, businesses, etc., the applicant failed to indicate that she was ever a member of the Saint Louis Catholic Church. She indicated on her application that she had been associated with the Jehovah Witnesses since August 1982. This discrepancy detracts from the credibility of the above declarations.

The record contains a copy of a medical note from [REDACTED], who states that he has treated the applicant since 1982. The declarant fails to provide supporting medical records, the address where the applicant resided during the relevant time period, or any other relevant details to corroborate the extent of his association with the applicant. The note provides minimal probative value as evidence in support of the applicant's claim.

The declarations from [REDACTED] and [REDACTED] are general in nature and state that the applicant resided and worked at their residences during portions of the requisite period. These declarations fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

Neither declaration provides concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the declarations. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has worked in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements have little probative value and do not indicate that their assertions are probably true.

Based upon the foregoing, the documents submitted in support of the applicant's claim have been found to contain a discrepancy and to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.