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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

L2

DATE: **APR 09 2012** Office: NEW YORK

FILE: [REDACTED]

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. 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, New York 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant asserts that the applicant presented evidence establishing that she entered the United States before January 1, 1982 and her unlawful residence for the requisite period.

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (*Zambrano*). 8 C.F.R. § 245a.10.

An applicant for permanent resident status 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).

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 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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of information contained in the attestation.

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 petitioner 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 or petition.

The issue in this proceeding is whether the applicant established that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the requisite period.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the end of the relevant period, the applicant provided affidavits from

The affidavits from _____ verify the applicant's birth and explain the absence of a birth certificate. These affidavits do not provide any information regarding the applicant's residence in the United States during the requisite period and therefore have no probative value.

In his affidavit, _____ states that he and the applicant spoke on the telephone in the summer of 1981 and in August 1983. _____ states that the applicant rented a room at 115-49 203rd Street, St. Albans, New York and worked for _____ as a babysitter. _____ lived in Texas during the requisite period and states that he spoke with the applicant on the telephone on occasion.

In his affidavit, _____ Ph.D., states that he first met the applicant in 1983 at the residence of _____ during a birthday party for a friend's daughter's first birthday. Dr. _____ also states that the applicant visited him and his family in Pittsford, New York in October 1983. Dr. _____ does not provide any information regarding the applicant's residence in the United States beyond the year 1983.

In her affidavit, [REDACTED] states that she lived at [REDACTED] and the applicant came to live with [REDACTED] when the applicant arrived in June 1981. [REDACTED] states that the applicant babysat her son until 1986 and that she paid the applicant \$60 per week.

In their affidavits, [REDACTED] state that they met the applicant in 1981 and that the applicant lived with [REDACTED] and cared for Ms. [REDACTED] son from 1981 to 1986. In his affidavit, [REDACTED] states that the applicant has been living in the United States since 1981. Although the affiants state that they met the applicant in 1981 they do not explain how they date their recollections.

In his affidavit, [REDACTED] the applicant's nephew, states that the applicant lived with him and his family from June 1986 to April 1990 and that the applicant cared for his son and received food, lodging, and \$75 per week.

In his affidavit, [REDACTED] states that the applicant visited him and his family in Illinois in November 1981 and again in June 1983. Mr. [REDACTED] states that he saw the applicant again during a trip to New York in 1983. Mr. [REDACTED] does not provide any information regarding the applicant's residence in the United States beyond her visits to Illinois in 1981 and 1983 and his visit to New York in 1983.

In their affidavits, [REDACTED] state that the applicant has been in the United States since 1981. However, the affiants lived in Bangladesh during the requisite period and did not have personal knowledge of the applicant's residence in the United States. Therefore these affidavits have no probative value.

In his affidavit, [REDACTED] states that the applicant rented a basement apartment from him at [REDACTED] from June 1981 to June 1986. The record contains a photocopy of a two year lease for June 19, 1981 to June 18, 1983 for \$125.00 per month and a photocopy of a two year lease for June 18, 1983 to June 18, 1985 for \$145.00 per month. The AAO notes, that the leases only list the applicant and do not include Ms. [REDACTED] or her husband as tenants. Further, the leases are inconsistent with counsel's statement on appeal that the applicant received food, lodging and a minimal wage for her expenses. As noted by the director in the notice to terminate and termination, the leases are written on forms created in March 1988. The applicant did not address this inconsistency on appeal.

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 unless the applicant submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The affidavits contain statements that the affiants have known the applicant for years and that attest to the applicant being physically present in the United States during the required period. These statements 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.

The witnesses' statements do not provide concrete information, specific to the applicant and generated by the asserted associations with the applicant, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavit. 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 lived 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, the witnesses' statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record of proceeding contains a letter on Jamaica Muslim Center, Inc. letterhead dated August 29, 1990 and signed by [REDACTED]. In his letter [REDACTED] states that the applicant first came to the mosque in August 1981 and since then often attends religious functions.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

[REDACTED] letter does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v) because it does not: include the dates of membership; state the address where the applicant resided during her membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letter is not deemed probative and is of little evidentiary value. Further, the AAO notes that the information in [REDACTED] letter is inconsistent with the applicant's Forms I-687. The record contains a 1990 Form I-687 and 2002 Form I-687 signed by the applicant. In response to the question regarding affiliations, the applicant lists "none" in the Forms I-687.

The record contains a photocopy of the applicant's passport with an entry stamp dated September 27, 1983. This is some evidence that the applicant was in the United States on September 27, 1983. If the applicant entered in 1983 with an intention of residing permanently in the United States and misrepresented herself to gain entry, she would be inadmissible. Such a ground of inadmissibility

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may be waived, but no purpose would be served regarding the instant application as she has failed to establish her continuous residence throughout the requisite period.

The record of proceeding also contains both original and copies of photographs. Although photographs may indicate presence in the United States on the dates listed, they cannot be verified and therefore, and will be given no weight.

Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 and that the applicant is admissible to the United States. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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