



U.S. Citizenship  
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[Redacted]

FILE: [Redacted] MSC 01 289 60152

Office: EL PASO

Date:

DEC 14 2007

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, El Paso, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 or that she had maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

On appeal, counsel for the applicant claims that the service erred in its decision, and resubmits affidavits in support of the applicant's eligibility.

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 amenability to verification. 8 C.F.R. § 245a.12(e).

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On her Form I-687, which she signed under penalty of perjury on October 4, 1993, the applicant claimed to reside at [REDACTED] in El Paso, Texas from April 1981 to May 1988. She also claimed to have worked for [REDACTED] as a housekeeper, and claimed that she lived with her at the same address.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988 and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as claimed, the applicant furnished the following evidence:

- (1) Notarized letter dated April 4, 2003 from [REDACTED] claiming that she has known the applicant since April 1981. She claims that the applicant's sister would sometimes come from Mexico to work for her as a seamstress, and that in 1981 she brought the applicant with her, which is the first time she met the applicant. She claims that soon thereafter, the applicant remained in the United States and that from 1981 to 1989, she would see the applicant often. She claimed that she would either see her with her sister, or that the applicant would periodically live with her in between full time jobs.
- (2) Notarized letters dated April 4 and October 5, 2003 from [REDACTED], claiming that the applicant worked for her and lived with her as needed from April 1981 through May 1988. She claimed that the applicant left the United States for a brief trip to Mexico in August 1987.
- (3) Notarized letter dated June 25, 2002 from [REDACTED], identical to the letter dated April 4, 2003.
- (4) Notarized letter dated April 4, 2003 from [REDACTED] claiming that she has known the applicant since April 1981. She claims that the applicant's sister would sometimes come

from Mexico to work for her as a seamstress, and that in 1981 she brought the applicant with her, which is the first time she met the applicant. She claims that soon thereafter, the applicant remained in the United States and that from 1981 to 1989, she would see the applicant often. She claimed that she would either see her with her sister, or that the applicant would periodically live with her during full time jobs.

- (5) Affidavit dated October 21, 1993 from the applicant, claiming that she has been living illegally in the United States since January 1, 1982.
- (6) Notarized statement dated September 28, 1993 by [REDACTED] claiming that she met the applicant in September 1984 through [REDACTED]. She claims that the applicant occasionally cleaned her house, and that she still sees the applicant periodically.
- (7) Notarized statement dated September 28, 1993 by [REDACTED] claiming that he has known the applicant since October 1981, when she periodically worked in his home approximately twice a month.
- (8) Affidavit dated September 14, 1993 by [REDACTED] claiming that he has known the applicant since April 1981 and that she currently worked for [REDACTED].

On November 26, 2003, the director issued a Notice of Intent to Deny (NOID) the application. The district director noted that despite the applicant's claim that she continually resided in the United States since 1982, the record did not contain credible evidence to support a finding that the applicant was continually present from before 1982 through 1988. The applicant's response failed to overcome the director's objections, and the application was subsequently denied on March 4, 2004.

On appeal, counsel for the applicant contends that contrary to the director's conclusions, the applicant did in fact demonstrate her eligibility, and that the notarized letters from her former employers substantiate her claimed unlawful residence in the United States.

Upon review, the AAO concurs with the director's findings.

As stated in 8 C.F.R. § 245.15(b)(1), a list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

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 or 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.

Here, the submitted evidence is not relevant, probative, and credible.

The *Matter of E-- M-* provides guidance in assessing evidence of residence, particularly affidavits. See 20 I&N Dec. 77. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable. Furthermore, the officer who interviewed that applicant recommended approval of the application, albeit, with reservations and suspicion of fraud. In this case, the interviewing officer recommended denial of the application, and there is no Form I-94 or admission stamp in a passport establishing the applicant entered the United States prior to January 1, 1982.

In her interview on March 12, 2003, the applicant claimed to have entered the United States without inspection on May 21, 1981. Since she entered without inspection, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. The applicant provided affidavits in support of the contention that she was present in the United States prior to 1982, but these documents are insufficient to establish her continuous residence.

The applicant claims to have resided at [REDACTED] in El Paso from 1981 to 1989. The affidavit of [REDACTED], however, claims that the applicant only resided with her on an *as-needed* basis. This is also true of the affidavit from another alleged employer, [REDACTED]. The fact that both employers claim to have provided housing for her on an as needed basis raises the question of whether the applicant was actually residing in the United States continuously during this time. In addition, the applicant claims to have lived with [REDACTED] beginning in 1988, but [REDACTED] claims that the applicant lived with her as early as 1981 as needed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, these affidavits, submitted to establish her employment history, fall short of the regulatory requirements. When payroll records are unavailable, CIS will accept letters from employers as provided in 8 C.F.R. § 245a.2(d)(3)(i). However, these affidavits provide none of the required information, such as the periods of employment, her duties, or any periods of layoff.

The major inconsistencies in these documents cannot be ignored. Neither the applicant nor counsel addressed or acknowledged these contradictory assertions. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop*,

*Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Furthermore, the affidavits submitted lack essential information to adequately support the applicant's contentions. While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

The affidavits submitted omit the applicant's residence during the relevant periods. While they claim that the applicant sometimes lived with each affiant as needed, they do not disclose where she resided at other times. Furthermore, the affidavits merely claim to have known the applicant during the years provided; they do not claim that she continuously resided in the United States during this period. It is also noted that the affidavits from [REDACTED] and [REDACTED] merely claim that they knew the applicant in 1981. These documents omit critical information, such as the basis for their acquaintance with the applicant or the origin of the information provided.

These affidavits are insufficient to demonstrate that the applicant unlawfully resided in the United States before January 1, 1982 and continually resided there unlawfully through May 4, 1988. The applicant has not submitted any credible contemporaneous documentation to establish presence in the United States from the time he claimed to have commenced residing in the U.S. through May 4, 1988, such as paystubs, rent receipts, leases, utility bills, or contracts in which the applicant was a party. In light of the fact that the applicant claims to have continuously resided in the United States, this inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

Given the absence of contemporaneous documentation and the reliance on affidavits and letters which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Therefore, the applicant is 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.