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U.S. Citizenship
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[Redacted]

FILE: [Redacted] MSC 02 043 63858

Office: LOS ANGELES

Date: MAY 02 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. Any further inquiry must be made to that office.

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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record reflects that the director issued a Notice of Intent to Deny (NOID) dated May 3, 2004, informing the applicant of the director's intent to deny her application for failure to demonstrate that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The director subsequently denied the application on June 10, 2004 based on the applicant's failure to respond to the NOID. The director reopened her decision on service motion on June 21, 2004, and withdrew the previous decision, determining that the applicant had submitted sufficient evidence to overcome the grounds for denial. The director again denied the application on July 12, 2004 based on the failure of the applicant to overcome the grounds for denial set forth in the NOID and because the applicant had been convicted of a felony or three or more misdemeanors.

On appeal, the applicant stated that she did not receive a copy of the NOID, and believes that it was mailed to the wrong address as reflected on the director's Notice of Decision (NOD). The applicant further stated that her felony charge was dismissed and that she has no convictions to preclude her from adjustment of status under the LIFE Act.

The record reflects that the director sent her NOID to the applicant at her address of record. The record also reflects that the applicant subsequently responded to the NOID. Therefore, the applicant's assertion that she did not receive the NOID is without merit.

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; 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 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 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.

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted evidence including copies of her children's birth certificates, indicating that they were born in the United States during the qualifying period, and a letter indicating that her son attended elementary school in the United States from 1985 through 1992.

The applicant submitted evidence, including contemporaneous documents, which tends to corroborate her claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E-M*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

The director further determined that the applicant had been convicted of a felony and therefore, pursuant to 8 C.F.R. § 245a.18(a), was inadmissible to the United States.

The applicant submitted a Federal Bureau of Investigation (FBI) report, which reflects that the applicant was arrested by the Sheriff's Office in Norwalk, California for the following offenses: on June 25, 1986, possession of narcotics or controlled substances for sale, for which she was convicted; on December 12, 1986 for possession of narcotics or controlled substances for sale, with the charges dismissed; and on November 11, 2001 for kidnapping, for which she was released with detention only.

The applicant also submitted certified court dispositions for all of these offenses except for the latter. The court dispositions reflect that on March 6, 1987, the applicant was convicted in the Superior Court of California, County of Los Angeles, of a violation of the California Health and Safety Code, section 11351, possession of a narcotic or controlled substance for sale, a felony. She was sentenced to 90 days in the county jail and placed on three years probation. Case number A640290. The record also reflects that on November 21, 2001, the court set aside the conviction and dismissed the complaint pursuant to California Penal Code Section 1203.4. However, for immigration purposes, the applicant still stands convicted of a felony. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

Accordingly, the record reflects that the applicant has been convicted of a felony. Therefore, she is inadmissible to the United States and 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.