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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC 01 324 60793

Office: NEW YORK

Date: NOV 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:

SELF-REPRESENTED

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 the matter 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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

The district director denied the application because the applicant failed to demonstrate that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, applicant asserts that the district director erred in the decision and did not consider the evidence mailed to the Service on June 24, 2004. The applicant asserts that she did comply with the request for evidence in the Notice of Intent to Deny. She provides a copy of the certified mail receipt and return receipt, as well as the evidence previously submitted.

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.

“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.

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

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative and credible.

In a May 28, 2004, Notice of Intent to Deny, the district director stated that the applicant failed to provide any primary evidence that she entered the United States prior to January 1, 1982. The director noted that the applicant's own sworn statements contradicted the evidence submitted. The director stated that the applicant testified that she entered the United States for the first time in June 1981, and that she did not leave the United States until September 1984. The director noted that the applicant's passport was issued in Port Au Prince on July 9, 1982, and it contained a stamp from Port Au Prince dated June 30, 1983. The director granted the applicant thirty (30) days to submit additional evidence.

In the April 4, 2005, Notice of Decision, the director stated that the applicant failed to submit additional evidence for consideration in the instant case. The record reflects that a letter by the applicant was received on June 25, 2005. The applicant stated that she has never been outside the

United States for more than 180 days. She further stated that she had not left the United States since her last entry in August 1986. She explained that her 1982 passport was issued in her absence, and since she had traveled by boat, her passport was not required. However, she did not explain the stamp in her passport from Port Au Prince on June 30, 1983. The stamp is inconsistent with the applicant's statement that she entered the United States in June 1981 and did not leave until September 1984.

The director also noted that the applicant's absence from the United States in 1984 was not listed on her Form I-687, Application for Status as a Temporary Resident, which only shows an absence in 1986. During the applicant's interview, she testified that she was absent from either September 2nd or 3rd of 1984 until her return on December 21, 1984. In a letter dated August 4, 2001, the applicant confirmed her absence from the United States from September 1984 to December 1984, as well as an additional absence from July 1986 to August 1986.

The applicant submitted a sworn letter by [REDACTED] who certified that the applicant worked for him as a housekeeper from October 1986 until December 1996. He stated that she was paid in cash. The letter fails to provide the applicant's address at the time of employment or show periods of layoff as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant also submitted two letters from [REDACTED] of [REDACTED] of Lisieux Church, dated February 8, 1991, and January 24, 2004. In both letters, [REDACTED] stated that the applicant had worshiped at his church since 1981 and was residing at [REDACTED], Brooklyn, New York. However, in the letter dated February 8, 1991, [REDACTED] stated that the applicant had lived in the United States for the past four years. In one letter [REDACTED] stated the applicant resided in the United States since 1981 and in another letter since 1987. This inconsistency brings into question the affiant's credibility. In addition, he fails to show inclusive dates of membership, include the seal of the organization impressed on the letter or the letterhead of the organization, and establish the origin of the membership information as required under 8 C.F.R. § 245a.2(d)(3)(v).

Finally, the applicant submitted a February 11, 1991 sworn letter by [REDACTED] who stated that the applicant had lived with her at [REDACTED], Brooklyn, New York since August 26, 1986. While this letter attests to the applicant's presence in the United States in 1986, it fails to establish the applicant's residence from prior to 1982 to 1986.

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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the 1983 passport stamp from Port Au Prince or the omission of her 1984 absence from the United States in the applicant's Form I-687.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir.,

2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions.

Furthermore, the applicant's 1984 absence, of either 119 or 120 days, interrupts her continuous unlawful residence during the requisite period. This single absence is in excess of forty-five (45) days between January 1, 1982, and May 4, 1988, as permitted under 8 C.F.R. § 245a.15(c)(1). While not dealt with in the director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged absence from the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." The applicant has not submitted any evidence to establish that an emergent reason delayed her return to the United States.

Therefore, based on the above, the applicant has failed to establish that she resided in continuous unlawful status in the United States 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.

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