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U.S. Citizenship  
and Immigration  
Services

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PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: NOV 20 2006

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 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", with a stylized flourish at the end.

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

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. In particular, the director observed in the Notice of Intent to Deny (NOID) that the applicant stated in a May 2, 1996 sworn statement that he first entered the United States in 1987. The director found that the affidavits submitted by the applicant did "not contain corroborative documentation to support" them and thus "[lacked] probative value." The director also found that other evidence submitted by the applicant lacked essential information. Finally, the director observed that the applicant lists no addresses or employment prior to 1992 on his Form I-687, Application for Status as a Temporary Resident.

On appeal, the applicant asserts that he first entered the United States in 1981 and that his previous erroneous testimony "was a mistake in the translation" or a "slip of the tongue." The applicant further contends that the affidavits and other evidence he has submitted are sufficient to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

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. 8 C.F.R. § 245a.11(b).

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. 8 C.F.R. § 245a.15(c)(1).

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).

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 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. See 8 C.F.R. § 245a.2(d)(3)(v).

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.

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). 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. *Id.*

Here the applicant has failed to offer independent objective evidence that adequately reconciles the inconsistencies in the record and sufficiently demonstrates that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

The record shows that the applicant testified under oath and in a signed statement that he first entered the United States in 1987. The sworn statement is handwritten in the applicant's native Spanish language, which strongly suggests that no translation error occurred. The applicant's explanation for this discrepancy is not convincing.

As additional evidence of residency, the applicant has submitted the following documents:

1. An affidavit dated October 5, 2001 from [REDACTED] attesting that as a friend to the applicant, the affiant has known that the applicant has lived in California since April 1986.
2. An affidavit dated October 5, 2001 from [REDACTED] z attesting that as a friend to the applicant, the affiant has known that the applicant has lived in California since April 1986.
3. A letter dated September 7, 2001 and an affidavit dated September 8, 2001 from Luis [REDACTED] a attesting that as a friend and in-law to the applicant, the affiant has known that the applicant has lived in three different cities in California since June 1981.
4. A letter dated June 8, 2001 from [REDACTED] of Our Lady Queen of Angels Church indicating that the applicant and his wife have regularly attended religious services at the church since 1982.
5. A registered mail receipt postmarked October 19, 1985 bearing the applicant's name.
6. A receipt from [REDACTED] Mexico dated May 24, 1984 bearing the applicant's name.

The director correctly notes that the postal receipt submitted by the applicant does not contain an address for the sender or the destination, a factor that diminishes the probative value of this evidence. The third-party affidavits submitted by the applicant lack specific information concerning the applicant's addresses other than the name of the cities in which the applicant allegedly resided. Coupled with the applicant's failure to provide addresses prior to 1992, the evidence in the record lacks sufficient probative value to show that the applicant continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. As stated above, 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. The applicant has not met that burden.

The applicant has failed to submit credible evidence of sufficient probative value to prove continuous residence in an unlawful status for the entire period of before January 1, 1982 through May 4, 1988. Accordingly, the applicant has not established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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