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U.S. Citizenship
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FILE: MSC 02 082 61175 Office: DALLAS Date: SEP 21 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. Any further inquiry must be made to that office.


Robert P. Wieman, 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, Dallas, Texas, 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 since before January 1, 1982 through May 4, 1988.

On appeal, counsel states that the director erred in finding that the applicant did not meet his burden of proof by a preponderance of the evidence. Counsel asserts that the director failed to give any weight to the applicant's supporting declarations and affidavits. Counsel submits a brief, copies of previously submitted documentation, a statement from the applicant's brother, and copies of memoranda from the legacy Immigration and Naturalization Service regional processing centers.

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 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.

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 his class membership sworn affidavit, which he signed under penalty of perjury on June 29, 1990, the applicant stated that he first arrived in the United States without inspection in July 1983. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on June 15, 1990, the applicant stated that he had been absent from the United States once during the required period,

from December 1986 to February 1987, when he visited his family in Mexico. In a signed statement submitted in connection with his Form I-485, Application to Register Permanent Resident or Adjust Status, the applicant stated that he had no absences from the United States.

The applicant stated on his Form I-687 application that he lived at [REDACTED] in Dallas, Texas from July 1983 until December 1984; at [REDACTED] in Naranja, Florida from December 1984 until September 1985; and at [REDACTED] in Dallas from September 1985 until the date of the Form I-687 application. The only work claimed by the applicant on his Form I-687 application was picking produce in the [REDACTED] in Dade, Florida from December 1984 until September 1985. The applicant stated that he had never held a steady job and had no documentation to show where and when he worked.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

1. A December 6, 2001 affidavit from [REDACTED] in which he stated that he met the applicant at a wedding reception in September 1981 and that the applicant has lived continuously in the United States since that time. However, on a form to determine class membership, which he signed under penalty of perjury on June 29, 1990, the applicant stated that he first arrived in the United States in July 1983. **Therefore, Mr. [REDACTED]'s statement is inconsistent with that of the applicant. 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).**
2. A July 24, 2003 sworn statement from [REDACTED] in which he stated that he has known the applicant since June of 1981. Mr. [REDACTED] did not indicate the circumstances surrounding his initial acquaintance with the applicant and did not indicate that the applicant had been present and living in the United States continuously since prior to January 1982.
3. A July 24, 2003 sworn statement from [REDACTED] of the [REDACTED] in Mesquite, Texas. Mr. [REDACTED] stated that the applicant "was a helping hand" at the ranch from 1981 to 1984 and from 1985 to 1988. Mr. [REDACTED] stated that he does not have official company records, but can attest to the applicant's work for the ranch. **Mr. [REDACTED] did not indicate in his 2003 statement the source that he used to date the applicant's work at the ranch.** In a January 8, 2004 sworn statement, however, Mr. [REDACTED] stated that he remembered the applicant because "[h]e was an excellent ranch-hand even at [a] young age, he did his job with or without any supervision. Dependability like his is very important to me, especially when someone is working with livestock." However, the applicant did not indicate on his Form I-687 that he had worked for Mr. [REDACTED] at any time during the qualifying period, stating instead that he had not held a steady job. Additionally, Mr. [REDACTED]'s statement conflicts with that of the applicant, who stated that he first entered the United States in 1983 and therefore could not have worked for Mr. [REDACTED] in 1981. *Matter of Ho*, 19 I&N Dec. at 591-92.

The district office's telephonic attempts to verify Mr. [REDACTED] statements were unsuccessful. In her letter accompanying the applicant's response to the director's Notice of Intent to Deny dated December 10, 2003, counsel "referred" CIS to the file of the applicant's brother, stating that Mr. [REDACTED] son introduced the applicant and his brother to Mr. [REDACTED] as potential ranch hands and that "this is evidence of the presence of both men in the United States during this period." We note that each application filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In

making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Counsel submitted no documentary evidence from Mr. [REDACTED]'s son to support her assertion that he provided evidence of the applicant's presence in the United States during the required period. The unsupported assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

4. A December 10, 2001 sworn statement from [REDACTED], in which he stated that he has known the applicant since January 1981. Mr. [REDACTED] did not indicate the circumstances surrounding his first acquaintance with the applicant, and did not indicate that the applicant had lived continuously in the United States during the qualifying period.
5. A Form I-705, Affidavit Confirming Seasonal Agricultural Employment of an Applicant for Temporary Residence Status Under Section 210 of the Immigration and Naturalization Act, which indicates that the applicant worked in Dade County Florida from December 1984 to April 1985, and from May 1985 to September 1985, for Southeast Groves. A June 25, 1990 sworn statement from [REDACTED] indicated that the applicant worked a total of 115 days in 1985 and 97 days in 1984.
6. A January 21, 2003 letter from [REDACTED] pastor of the Saint Bernard of Clairvaux Catholic Church. Reverend [REDACTED] stated that "[s]tarting in 1986," the applicant "was an active member of the church's Hispanic Youth Group." Reverend [REDACTED] stated that the youth group leader "has confirmed his membership at that time;" however, the letter does not indicate the nature of the records relied upon by the group leader in dating the applicant's association with the Hispanic Youth Group. Further, the letter does not indicate where the applicant lived during the period that he was a member of the Hispanic Youth Group with the church. *See* 8 C.F.R. § 245a.2(d)(3)(v).
7. A March 12, 2003 letter from Sister [REDACTED] in which she stated:

I served in the Catholic Diocese of Dallas from 1985 to 1995 as Director of Religious Education at Blessed Sacrament Parish [from] 1985-1986 and again from 1987-1989 and the Diocesan Evangelization Team from 1986-1987; Director of Pastoral Juvenil (Hispanic Youth) and Assistant Vocation Director for the Diocese from 1990-1995.

During my term as Director of Hispanic Youth, [the applicant], a young Mexican man volunteered in one of the many programs for youth retreats held there at the Catholic Conference and Formation Center in Oak Cliff.

Sister [REDACTED] statement does not support the applicant's claim of living in the United States since prior to 1982.

8. On appeal, the applicant submits an April 19, 2004 affidavit from his brother, who stated that the applicant has lived in the United States since 1981. However, a statement from the applicant's brother does not constitute independent and objective evidence to overcome the applicant's statement that he first entered the United States unlawfully in 1983. *Matter of Ho*, 19 I&N Dec. at 591.

While affidavits in certain cases can effectively meet the preponderance of evidence standard, the statements and affidavits submitted by the applicant in support of his application contradict his statements about the date of his

entry into the United States. The applicant submitted no contemporaneous evidence of his presence and residency in the United States during the qualifying period.

Accordingly, given the absence of any contemporaneous documentation, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

We note that the applicant was arrested and jailed by the Dallas Police Department on March 17, 1990, and charged with several traffic offenses, including running a red light and operating a vehicle without a license. The record does not contain the final disposition of these offenses.

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