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U.S. Citizenship
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Services

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[Redacted]

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FILE: [Redacted]
MSC-02-197-62065

Office: NEW YORK

Date: JUL 26 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. The file has 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.

A handwritten signature in black ink, appearing to read "Robert P. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to submit additional evidence in response to the Notice of Intent to Deny (NOID) issued on October 7, 2005. In the NOID, the director found that the applicant did not demonstrate eligibility for permanent resident status under the LIFE Act. Specifically, the applicant stated in his interview with an immigration officer that he entered the United States for the first time in 1987. In addition, the Form G-325A submitted by the applicant indicated he resided in Mexico from his birth until July 1987. The director determined that the applicant did not enter the United States prior to January 1, 1982 and, as a result, that he was not eligible for adjustment of status under the LIFE Act.

On appeal, the applicant's attorney submitted a statement explaining that the applicant had misunderstood the immigration officer's question regarding his date of entry into the United States. The applicant provided no additional evidence or explanation to overcome the reasons for denial of his application.

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).

"Continuous unlawful residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and continuously resided in the United States in an unlawful status since such date and through May 4, 1988.

The record shows that the applicant submitted a Form I-687 Application for Status as a Temporary Resident to the Immigration and Naturalization Service (INS), which was signed by the applicant on April 18, 1990. At part #33 of the Form I-687 application where applicants were asked to list all of their residences in the United States since their first entry, the applicant listed [REDACTED] Bronx, New York from November 1981 to April 1984; [REDACTED] New York, New York from April 1984 to April 1987; [REDACTED] New York, New York from April 1987 to April 1989; and [REDACTED] Richmond Hills, New York from April 1989 to the present time. At part #36 where applicants were asked to list employment in the United States since first entry, the applicant indicated he was employed in two different positions at DEMJO Diner from January 1986 to the present time, and employed doing “odds and ends, construction/labor” from January 1982 to January 1986.

The applicant submitted multiple affidavits in support of his Form I-687 application. In a form affidavit, [REDACTED] stated that she had personal knowledge that the applicant resided at a series of specified addresses in the United States during specified time periods. This affidavit was found to be inconsistent with the applicant’s statements on the Form I-687 application in that the affiant stated that the applicant resided at [REDACTED] from April 1989 to April 1989 instead of from April 1984 to April 1987 as indicated on the Form I-687 application. In addition, words were printed on the affidavit form stating that the affiant “is able to determine the date of the beginning of [her] acquaintance with the applicant in the United States from the following fact(s):” followed by a line to be filled in. On the line, the affiant wrote “Jan. 1986.” As a result of this statement, the affidavit is found to be lacking in detail.

In a form affidavit, [REDACTED] stated that she had personal knowledge that the applicant resided at a series of specified addresses in the United States during specified time periods. This affidavit was found to be inconsistent with the applicant's statements on the Form I-687 application in that the affiant stated that the applicant resided at [REDACTED] Bronx, New York from November 1981 to November 1984, instead of from November 1984 to April 1984 as indicated on the Form I-687 application. In addition, words were printed on the affidavit form stating that the affiant "is able to determine the date of the beginning of [her] acquaintance with the applicant in the United States from the following fact(s):" followed by a line to be filled in. The applicant did not write anything in the space provided. As a result, this affidavit is also found to be lacking in detail.

In a form affidavit, [REDACTED] stated that he had personal knowledge that the applicant resided at a series of specified addresses in the United States during specified time periods. These dates were found to be consistent with the information provided on the Form I-687. However, the affiant also neglected to provide information explaining how he was able to determine his dates of acquaintance with the applicant. As a result, this affidavit is also found to be lacking in detail.

[REDACTED] also provided a form affidavit stating she had personal knowledge that the applicant resided at a series of specified addresses in the United States during specified time periods. The specified periods and places of residence are found to be consistent with the information provided on Form I-687. In this affidavit, the affiant indicated the longest period during the residence described in which she has not seen the applicant is three years. After the words printed on the affidavit form stating that the affiant "is able to determine the date of the beginning of [his] acquaintance with the applicant in the United States from the following fact(s):" the affiant wrote "1987." As a result, this affidavit is also found to be lacking in detail.

[REDACTED] provided a form affidavit stating she had personal knowledge that the applicant resided at a series of specified addresses in the United States during specified time periods. The specified periods and places of residence are found to be consistent with the information provided on Form I-687. After the words printed on the affidavit form stating that the affiant "is able to determine the date of the beginning of [her] acquaintance with the applicant in the United States from the following fact(s):" the affiant wrote, "Jan. 1986." As a result, this affidavit is also found to be lacking in detail.

[REDACTED] provided a form affidavit stating he had personal knowledge that the applicant resided at a series of specified addresses in the United States during specified time periods. The information provided in this affidavit was generally found to be consistent with the information provided in Form I-687. However, the affidavit listed the applicant's apartment number as "5B" from April 1989 to the present time and as "8A" from April 1987 to April 1989, instead of as "8A" from April 1984 to April 1987 and "5B" from April 1987 to April 1989. In addition, after the words printed on the affidavit form stating that the affiant "is able to determine the date of the beginning of [her] acquaintance with the applicant in the United States from the following fact(s):" the affiant wrote, "June 1989." As a result, this affidavit is also found to be lacking in detail.

provided a form affidavit stating he had personal knowledge that the applicant resided at a series of specified addresses in the United States during specified time periods. The information provided in this affidavit was generally found to be consistent with the information provided in Form I-687. However, after the words printed on the affidavit form stating that the affiant "is able to determine the date of the beginning of [his] acquaintance with the applicant in the United States from the following fact(s):" the affiant did not write anything in the space provided. As a result, this affidavit is also found to be lacking in detail.

provided a form affidavit stating he had personal knowledge that the applicant resided at a series of specified addresses in the United States during specified time periods. The affiant confirmed the applicant's residences for the period from April 1987 to the present time. The dates and residences provided were consistent with the information provided on Form I-687. The affiant had also listed residences for the period between November 1981 to April 1984 but this information was crossed out. The affiant indicated he was able to determine the date of the beginning of his acquaintance with the applicant because the affiant was a "customer in Bell Air Diner his work." This information is found to be inconsistent with Form I-687, on which the only employment listed for the period of November 1981 to the present time was with "DEMJO Diner" from January 1986 to the present time.

The applicant submitted Form I-485 Application to Adjust to Permanent Resident Status on April 15, 2002. With the application, the applicant also submitted a Form G-325A listing biographic information. Where applicants were asked to list their last address outside the United States of more than one year, the applicant listed an address in Oaxaca, Mexico from December 1969 to July 1987. This information is found to be inconsistent with the applicant's Form I-687, which indicates he resided in the United States starting in November 1981.

The record indicates the applicant was interviewed by an immigration officer in relation to his application to adjust to permanent resident status on March 31, 2004. In the interview, the applicant stated that he first entered the United States in 1986. When the officer asked the applicant a second time regarding his entry date, he stated he was not sure but he thought it was 1987. The officer stated, "Not 1986?" and the applicant stated, "No. 1987." The officer stated, "Are you sure?" and the applicant stated, "yes." The applicant's statements in the interview are found to be inconsistent with the information on Form I-687, which indicates he resided in the United States starting in November 1981.

In her NOID issued on October 7, 2005, the director referenced the applicant's written statement on Form G-325A and his statement in the interview with an immigration officer indicating the applicant resided in Mexico until 1987 and that he did not enter the United States until 1987. As a result, the director determined that the applicant clearly did not enter the United States prior to January 1, 1982 and notified the applicant of her intent to deny the application. In denying the application on December 27, 2005, the director noted that the applicant had failed to respond to the NOID in the time allotted.

On appeal, the applicant's attorney submitted a statement explaining that the applicant had misunderstood the immigration officer's question regarding his date of entry into the United States. The attorney indicated that applicant said he entered in 1987 but the real time he entered was in May 1981. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). There is no evidence in the record indicating the applicant actually was confused by the immigration officer's question. The applicant also failed to provide an explanation for the statement in the Form G-325A that indicates the applicant was residing in Mexico during the statutory period. The applicant also presented no additional supporting documentation to counter the negative evidence and inconsistencies the director identified. Since the statements of the applicant's attorney do not constitute evidence, the applicant is found to have provided no additional evidence or explanation to overcome the reasons for denial of his application.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-1988 period. The applicant's testimony in his interview with an immigration officer and statements on the Form G-325A are found to conflict with the information provided on Form I-687. Specifically, the applicant indicated on his Form I-687 that he first resided in the United States starting in November 1981. However, he stated in his interview with an immigration officer that he entered the United States for the first time in 1987. The applicant stated on Form G-325A that his last address outside the United States for more than one year was in Oaxaca, Mexico from December 1969 to July 1987. Lastly, many of the affidavits provided by the applicant conflicted with the information he provided in Form I-687, and all but one of the affidavits was found to be insufficiently detailed.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the contradictory statements contained in the applicant's I-687 application and supporting affidavits, Form G-325A, and in the record of the interview with an immigration officer, and given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to furnish sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and continuously resided in the United States in an unlawful status since such date and through May 4, 1988 as required under both 8 C.F.R. § 245a.11(b) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for permanent resident status under section 245A of the Act on this basis.

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