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U.S. Citizenship
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[Redacted]

FILE:

MSC 01 310 61369

Office: HOUSTON, TX

Date: APR 02 2008

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. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National Records Center. 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. If your appeal was sustained, or if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

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 (director), Houston, Texas, 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 demonstrate that he resided in the United States in a continuous unlawful status from a date prior to January 1, 1982 through May 4, 1988.

On appeal, counsel indicated that the evidence of record was sufficient to demonstrate that the applicant was continuously present in the United States during the statutory period.

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.

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 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, to 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 AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial

decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO’s *de novo* review authority. *See*, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

In the Notice of Intent to Deny (NOID), dated November 5, 2003, the director stated that the applicant failed to demonstrate his continuous unlawful residence in the United States during the requisite period. Specifically, the director stated that the applicant provided inconsistent evidence related to his claim that he entered the United States prior to January 1, 1982. The director pointed out that while the applicant testified at his October 8, 2002 LIFE legalization interview that during 1980 he entered the United States with his uncles, on his Form G-325A, Biographic Information, which the applicant signed on August 1, 2001, he stated that he resided in Ojo De Pinto, Mesquite De Carmona, San Luis Potosi, Mexico from his birth in June 1971 until October 1988. The director also indicated that various affidavits and statements in the record suggested that the applicant first arrived in the United States during February 1982.

On December 5, 2003, the applicant submitted through counsel a rebuttal to the NOID. In the rebuttal, counsel failed to address the point made by the director that on the Form G-325A, submitted in connection with the applicant’s Form I-485, Application to Register Permanent Residence or Adjust Status, the applicant stated that he did not leave Mexico until October 1988. That is, the applicant represented that he did not leave Mexico at the age of eight or nine, as he indicated at his LIFE legalization interview. Rather he left his home village in Mexico at the age of 17. Counsel suggested in the rebuttal that the May 5, 1990 statement of the applicant’s employer [REDACTED] which indicates that the applicant worked for [REDACTED] during 1981 through 1983 taken together with the applicant’s statements that he entered the United States during 1980 are sufficient to establish the applicant’s continuous residence in the United States beginning on a date prior to January 1, 1982.

Counsel also asserted that certain statements and affidavits in the record indicate that the individuals who signed those documents *met* the applicant in the United States during February 1982, not that the applicant *arrived* in the United States during February 1982, as suggested by the director in the NOID. The AAO concurs with counsel.

On March 4, 2004, the director denied the applicant based on the reasons set out in the NOID.

The applicant stated on the Form G-325A, which he signed on August 1, 2001, that he resided continuously in his home village in Mexico until October 1988. In his affidavit in the record which is also dated August 1, 2001, he attested that he arrived in the United States during 1980 as a small child.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

² While the name [REDACTED] may be either a man’s name or a woman’s name, on appeal counsel clarified that [REDACTED] is male.

Such discrepancies in the record cast serious doubt on the authenticity of all the evidence of record and on the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States throughout the statutory period. The applicant has failed to provide contemporaneous evidence that might be considered independent, objective evidence of his having resided in the United States from a date prior to January 1, 1982 and throughout the statutory period.

This office also finds that the various statements in the record which purport to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States in an unlawful status throughout the entire statutory period.

The AAO would note incidentally that the May 5, 1990 statement of [REDACTED], a statement on which counsel relies as sufficient evidence that the applicant resided in the United States prior to January 1, 1982 and a statement on which the only information added to this preprinted form is the name of the applicant and [REDACTED]'s signature, reads as follows:

To whom it may concern, [REDACTED] (sic) a good sober man, a hard worker and very dependable. He worked for me several years (sic) from 1981 through 1983. Doing (sic) remodeling, yard maintenance (sic). He disciplined (sic) himself in a professional manner (sic) working with customers. He is on the re-hire list any time he should call.

The applicant turned ten years old during June 1981. As such it is unclear to this office, why, if [REDACTED] did actually know the applicant during 1981 through 1983, he would have referred to him, a small child, as a "good sober man", or why [REDACTED] would have asked a small child to deal directly with customers.

The AAO also notes incidentally that counsel's suggestion made on appeal that it is not reasonable for Citizenship and Immigration Services (CIS) to request contemporaneous evidence of the applicant's residence in the United States during the initial portion of the statutory period because such a small child of age eight or nine would not have paperwork or possessions in his own name is not persuasive. A child of eight or nine would have been required by U.S. law to attend school, and as such would have needed to obtain immunization records in the United States and school records would have been created in his name, which in turn could have been submitted into the record. Even if his relatives had managed to avoid enrolling the applicant in school during the statutory period, it is reasonable to expect that at some point the applicant would have had applied for a library card or some other form of identification, or that he would have visited a doctor or a dentist, a visit for which there would have been a record.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988 as required under Section 1104(c)(2)(B) of the LIFE Act. Thus, the applicant has not demonstrated that he is eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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