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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

MSC 03 248 64552

Office: LOS ANGELES

Date:

AUG 28 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 returned to the National Benefits 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 remanded for further action, 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) in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director failed to properly evaluate the evidence submitted by the applicant. Counsel further asserts that the applicant has provided sufficient evidence to establish that he has resided in the United States continuously in an unlawful status since 1981.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. See 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, 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 applicant, a native of Mexico who claims to have lived in the United States since August 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 5, 2003. As evidence of his residence in the United States during the years 1981-1988 the applicant submitted a series of letters and affidavits which had originally been filed in 1991. They include the following:

- An affidavit from [REDACTED] a resident of Fontana, California, dated December 21, 1990, stating that he was the owner of A & R Janitorial Service in Fontana, that the applicant was employed from August 1981 to May 1987 on a temporary basis for around three months of each year, that he was provided with board and transportation and was paid in cash, and that the company did not keep any record of the applicant’s employment.
- A letter from [REDACTED] self-employed owner of a construction business at an unidentified locale, dated September 18, 1990, stating that the applicant was employed as a construction assistant from July 1987 to

December 1988, that the applicant was paid in cash, and that there was no official record of the employment.

- An affidavit from [REDACTED] self-employed owner of a construction business at an unidentified locale, dated January 23, 1991, stating that the applicant was employed as a construction assistant from January 1988 to June 1990, was paid in cash, and that there was no official record of the employment.

Affidavits from [REDACTED] resident of San Bernardino, California, dated October 8, 1990, stating that the applicant lived with her at [REDACTED] San Bernardino, California, from August 1981 to March 1987, and from [REDACTED] a resident of San Bernardino, California, dated March 8, 1990, and September 20, 1990, stating that the applicant lived with him at [REDACTED] from March 1987 to August 1990, and that he knew that the applicant left the United States for Mexico on September 6, 1987 and returned on September 21, 1987 because the applicant was living with him at the time.

- Affidavits from [REDACTED] dated September "31," 1990, from [REDACTED] dated November 7, 1990, from [REDACTED] October 17, 1990, from [REDACTED] dated November 3, 1990, from Pedro [REDACTED] dated November 27, 1990, and from [REDACTED] dated September 18, 1990, all residents of San Bernardino, California, stating that they had personal knowledge that the applicant had resided in the United States from different years starting from 1981 to the present (1990), and that they have been friends with the applicant since the early 1980s. Only two of the affiants claimed to have known the applicant by 1982.
- A pay stub from Christensen Construction Co. of Rialto, California, with a net pay of \$89.16, issued to [REDACTED] for the pay period October 9 to October 15, 1981

Various retail receipts with hand written notations of the applicant's name, and sometimes a United States address, dated 1982 through 1986.

On August 26, 2006, the director issued a Notice of Intent to Deny (NOID), stating that the applicant failed to submit additional evidence of his continuous residence in the United States as requested in the Form I-72, issued at his interview for LIFE legalization (on May 1, 2006), and that the applicant failed to submit a completed Form I-692, [Medical Examination]. The director noted that the documents submitted by the applicant were not sufficient to establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

On October 6, 2006, the director issued a Notice of Decision denying the application based on the grounds stated in the NOID. The director indicated in the decision, that the applicant had not responded to the NOID, but the record shows that the applicant did respond to the NOID with a letter dated September 26, 2006 and submitted a personal letter dated July 24, 2006 with his response. The applicant reiterated his claim that he has resided continuously in the United States since 1981. The applicant stated that he did not have additional documents to submit because his employers paid his salary in cash and that he had no records of the payments.

On appeal, counsel asserts that the director did not properly consider the substantial evidence submitted by the applicant. Counsel asserts that the applicant has submitted sufficient credible evidence to establish that he has been residing in the United States since before January 1, 1982. Counsel submits an updated affidavit from [REDACTED] dated November 22, 2006, in which she stated that she met the applicant in 1981 when the applicant patronized the restaurant where she worked as a waitress, that she rented a room to the applicant at her home located at [REDACTED] from August 1981 to March 1987, that she saw the applicant everyday and they would talk a little, that the applicant would clean the yard every Saturday, that she maintained contact with the applicant after he moved out of her house, and that they lost contact after 1990 until recently.

The AAO maintains plenary power to review each appeal 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 AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The employment letters from [REDACTED] dated December 21, 1990, from [REDACTED] dated September 18, 1990, and from [REDACTED], dated January 23, 1991, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not provide the applicant's address at the time of employment, and do not state the job duties of the applicant. Since the affiants claim no official record was kept of the employment, CIS would be unable to verify the information attested to by the affiants. The letters were not supplemented by tax records or other documentation demonstrating that the applicant actually had the jobs during any of the years claimed. Additionally, the letters were not accompanied by any documentation from any of the affiants of their own identities and presence in the United States during the 1980s. The AAO notes that [REDACTED] did not state that they knew of the applicant prior to 1987.

For the reasons discussed above, the AAO determines that the employment letters in the record are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 through 1988.

The affidavits by [REDACTED] dated October 8, 1990 and November 11, 2006, and from [REDACTED] dated September 20, 1990, provide some basic information about the applicant, such as the addresses he claims in the United States during the 1980s, but few details about the applicant's life in the United States and his interaction with the affiants over the years. The information in the affidavits is not very personal in nature, and could just as easily have been provided by the applicant. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits from [REDACTED] dated September 31, 1990, from [REDACTED] dated November 7, 1990, from [REDACTED] dated October 17, 1990, from [REDACTED] dated November 3, 1990, from [REDACTED] Tanus, dated November 27, 1990, and from [REDACTED] dated September 18, 1990, stating that they had personal knowledge that the applicant had resided in the United States at various times starting from 1981 through 1990, all have minimalist or fill-in-the-blank format with minimum input from the affiants. The affiants provided no detailed information about the applicant's life in the United States and their interaction with him over the years. The information in the affidavits is not very personal in nature, and could just as easily have been provided by the applicant. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

For various reasons, the pay stub from Christensen Construction Company for the pay period October 9, to October 15, 1981, has no probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988. The applicant did not list the company on his Form I-687 in 1991 as one of his employers in the United States in 1981, or any other time during the 1980s. Also, the total earnings amount appears to have been altered. Lastly, all the entries on the form are handwritten and there is no company stamp or other mark of the company to verify the form's authenticity.

The various retail receipts dating from 1982 to 1986, are all handwritten with no stamps or other official markings to authenticate the dates they were written. Some of the receipts do not identify the applicant's complete name and address. Furthermore, none of the receipts date from

before January 1, 1982. Given these substantive deficiencies, the receipts are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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