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FILE: [REDACTED]
MSC 02 211 61894

Office: LOS ANGELES, CALIFORNIA Date: FEB 25 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. 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director also indicated that the applicant failed to provide sufficient, credible evidence that he was continuously present in the United States during the statutory period beginning on November 6, 1986 and ending on May 4, 1988.

On appeal, counsel asserted that the applicant did maintain continuous unlawful residence and physical presence in the United States during the statutory periods.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

See also 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that 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.

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 states 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 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

At issue in this preceding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record indicates that on or near July 9, 1993, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On April 29, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains several statements and affidavits relating to the applicant’s claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. The record also contains documentation of the applicant’s testimony and various other applications in which he indicated that he was outside the United States from approximately March 1987 through some date in 1989. For instance, the record includes:

1. The transcript of the applicant’s March 7, 1997 Executive Office for Immigration Review (EOIR) hearing before Immigration Judge Jay Segal in which the applicant testified that he first entered the United States during January 1982, that he departed the United States on March 20, 1987 and that he did not return to the United States again until December 1989. Later in the hearing the applicant was asked to confirm that he departed the United States

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).

during March 1987, and that he remained outside the United States until December 1989. He did confirm this.

2. The Immigration and Naturalization Service (INS, now Citizenship and Immigration Services, CIS) officer notes from the applicant's June 24, 1996 asylum interview which indicate that the applicant testified that he first entered the United States during January 1981, that he departed the United States during March 1987, and that he remained outside the United States until December 1989.
3. The Form EOIR-40, Application for Suspension of Deportation, filed February 14, 1997, in which the applicant stated at item #19 that he first entered the United States on January 1, 1982. In addition, he stated at item #25, where he was to list all departures from the United States regardless of how brief, that he first departed the United States on March 18, 1987 and that he did not return to the United States again until July 16, 1989. At item #16, where he was to list his residences during the past 10 years, he stated that from January 10, 1981 through March 18, 1987, he resided at [REDACTED] Los Angeles, California; that from March 20, 1987 through July 10, 1989, he resided at [REDACTED] Jalpa Zacatecas, Mexico; and that from July 16, 1989 through December 10, 1989, he resided at [REDACTED] Los Angeles, California.
4. The Form I-589, Application for Asylum and Withholding of Deportation, filed May 20, 1996, in which the applicant indicated on his declaration attached to that application that on or about January 10, 1981, he entered the United States; that on March 18, 1987, he exited the United States to return to Mexico and marry; and that he initially planned to remain working in Mexico, but that he instead returned to the United States on December 16, 1989.

There is no contemporaneous evidence in the record directly relevant to the applicant's claim that he resided continuously in the United States during the period of March 20, 1987 through May 4, 1988.

On May 13, 2003, the director issued the Form I-72, Request for Evidence, on which the director asked the applicant to furnish proof of his continuous presence in the United States during the statutory period. On August 7, 2003, the applicant through counsel provided a response to the Form I-72. The response included certain documents that relate to events that occurred after May 4, 1988, and as such are not relevant to the applicant's claim that he resided in the United States during the statutory period. Counsel also provided a copy of a Western Union money transfer receipt. This receipt documents that the applicant wired money from Los Angeles to Mexico. Counsel stated in her cover letter that this receipt was issued on an unspecified date in 1988. The receipt includes a date line which includes a handwritten date, but the year listed in this date is not legible. This office would underscore that the money transfer receipt form was itself not copyrighted by Western Union until 1990. Thus, this receipt may not be taken as contemporaneous evidence that the applicant was in the United States during the statutory period. Counsel also submitted a copy of an MP&G Tune-Up invoice, which according to counsel, relates to car repairs which the applicant received on August 22, 1987. However, the handwritten date on the receipt appears to reflect that these services were performed on September 9, 1987. Moreover, the name on the receipt is not legible, and as such there is no indication that this receipt relates to the applicant. Thus, this copy of a car repair invoice shall not be considered contemporaneous evidence that the applicant resided in the United States during the statutory period. Counsel

also submitted a copy of the front and back of an envelope which bears the applicant's name and return address. This envelope appears to have been posted in Los Angeles on March 27, 1985.

On March 22, 2005, the director issued a Notice of Intent to Deny (NOID) which indicated that the applicant had failed to demonstrate continuous presence in the United States during the statutory period. In the NOID, the director indicated that she intended to deny the application because the applicant had stated directly on his asylum declaration that he departed the United States on March 18, 1987 and did not return until December 16, 1989, and that he remained in Mexico for such a long period because his intention was to live permanently in Mexico. The director indicated that at his EOIR hearing the applicant also provided testimony which further confirmed these statements. Thus, the director concluded that the applicant had not established that he resided continuously in the United States during the statutory period and that he had not established that he had remained in Mexico for more than 45 days during the statutory period due to emergent reasons.

The applicant did not submit a rebuttal to the NOID. On May 10, 2005, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel asserted that the individual who prepared the applicant's asylum application did not read the information on that form to the applicant. In addition, counsel indicated that the full transcripts from the EOIR hearing should make clear that the applicant was nervous at that hearing and was not clear on what dates he departed and returned to the United States. The documents submitted in support of the LIFE application, however, show with consistency that the applicant resided continuously in the United States during the statutory period, according to counsel. Counsel also asserted that the applicant provided documentation to demonstrate that there had been a fire at his home in Los Angeles on June 21, 1988 and that as a consequence, the applicant's contemporaneous evidence of continuous residence had been destroyed. Thus, counsel indicated that CIS should contact the individuals who wrote the various affidavits and statements submitted into the record to verify the contents of those documents, and CIS should view that as sufficient to demonstrate that the applicant resided continuously in the United States during the statutory period. Finally, counsel asserted that during 1994 in response to the applicant's application for class membership, the INS officer indicated that the applicant had provided sufficient documentation of continuous residence in the United States from 1985 onwards, and that CIS may not now contradict that finding, but should instead view this earlier finding as further evidence of the applicant's continuous residence in the United States.

This office would underscore that the applicant testified and *reconfirmed* during his March 7, 1997 EOIR hearing that he was outside the United States from approximately March 20, 1987 through December 1989. He also testified before an Asylum Officer on June 24, 1996 that he exited the United States during March 1987 and did not reenter this country until December 16, 1989. In addition, he testified that his initial intent was to live permanently in Mexico, but threats to himself and to his family prompted him to leave Mexico in 1989. That is, the record indicates that he did not remain in Mexico over 45 days due to emergent reasons which compelled him to stay. The information which the applicant provided at various places on the Form EOIR-40 and on the declaration attached to his Form I-589 further corroborates these various points in his EOIR hearing testimony, his asylum written declaration and his asylum interview testimony. Yet, on the Form I-687 the applicant stated that May 3, 1987 through May 23, 1987 is the only period during which he was outside the United States subsequent to his entry in 1981, and prior to signing that form on June 10, 1993. The record further reflects that the applicant married in Mexico during April 1987.

These discrepancies in the evidence cast serious doubt on all the evidence in the record. This in turn casts serious doubt 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. 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 during the statutory period, despite any claim by counsel that the applicant should not be expected to produce such evidence because of a fire that occurred during 1988.²

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).

The applicant did submit copies of envelopes postmarked 1982, 1983, 1984 and 1985 which list the sender's name as "[REDACTED]" and "[REDACTED]" at an address in Los Angeles different than those which the applicant lists for himself on the Form I-687. The applicant also submitted what appears to be a State of California Department of Motor Vehicles receipt dated May 16, 1985 which lists his name. Even if the AAO were to find such documentation established that he resided in the United States for some portion of the statutory period prior to March 20, 1987, such evidence which list dates prior to March 20, 1987 would not overcome the contradictory information in the record regarding the applicant's claim that he resided in the United States during March 20, 1987 through May 4, 1988.

The applicant failed to provide contemporaneous evidence that might be considered independent, objective evidence of his having resided continuously in the United States from March 20, 1987 through May 4, 1988, and that he was continuously present in the United States during this period.

This office also finds that the various statements and affidavits in the record which purport to substantiate the applicant's continuous residence in the United States just before and 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 from March 20, 1987 through May 4, 1988.

² This office notes incidentally that the record contains a copy of what appears to be a Los Angeles Fire Department (LAFD) abstract summarizing a fire that the LAFD brought under control on June 21, 1988 at [REDACTED]. This abstract does not make reference to the applicant's name and [REDACTED] is the address which the applicant listed for himself on [REDACTED] in Los Angeles on the Form I-687, not [REDACTED]. Thus, this document may not be considered evidence that a fire occurred at the applicant's home. The record also includes what appears to be copies of microfiche that do make reference to [REDACTED] and to work being done at that address to repair fire damage for an owner named [REDACTED]. It is not clear from the copies when the fire damage may have occurred and the extent of the damage. Also, the only work that appears to have been ordered and documented on this microfiche is the installation of smoke detectors for a charge of \$26.00. Thus, these copies of microfiche also may not be considered evidence that a fire occurred at the applicant's home.

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, and continuous presence in the United States during the statutory period beginning on November 6, 1986 and ending on May 4, 1988.

Thus, the applicant is not 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.