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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 01 354 61337

Office: SAN FRANCISCO

Date: JUL 03 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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 Legal Immigration Family Equity (LIFE) Act was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status since then through May 4, 1988.

On appeal, counsel for the applicant submits a brief.

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 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).

On September 19, 2001, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act. On January 15, 2003, the applicant was interviewed in connection with his I-485 application.

In a Notice of Intent to Deny (NOID)/Request for Evidence(RFE), dated January 15, 2003, the district director determined that the applicant had failed to submit sufficient documentation to warrant favorable consideration of his application. The district director granted the applicant thirty (30) days to submit evidence of his entry into the United States before January 1, 1982, and evidence of his unlawful status and continuous residence in the United States from January 1, 1982, through May 4, 1988. In response, counsel for the applicant submitted a declaration from the applicant and the results of a polygraph examination.

In a Notice of Decision (NOD), dated October 21, 2004, the district director denied the application based on the reasons stated in the NOID. The applicant, through counsel, filed a timely appeal from that decision on November 17, 2004. On appeal, counsel contends that the decision of the district director conflicts with Ninth Circuit law. Counsel cites *Vera-Villegas v. INS*, 330 F 3d. 1222 (9<sup>th</sup> Cir. 2003) as holding that absent a finding of lack of credibility or internal inconsistency, credible testimony and or written declarations are sufficient to establish eligibility for adjustment of status to permanent residence under the LIFE Act.

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

A review of the record reflects that the applicant has provided sufficient documentation to establish his unlawful presence in the United States from June 1984 through May 4, 1988. However, there is insufficient evidence to establish that he continuously resided in the United States in an unlawful status before January 1, 1982, through May 1984. With regard to this time period, the applicant provided:

1. Two undated letters - one of which is not notarized; the other notarized on July 13, 1994 - from his brother, [REDACTED] stating that the applicant shared housing with him in Oakland, California, from 1981 to 1984.
2. An affidavit, dated July 19, 1994, from [REDACTED], of Oakland, California, stating that he had "been acquainted with [the applicant] in the United States since 1981."
3. An affidavit, dated January 21, 2003, from [REDACTED], of San Leandro, California, stating that he and the applicant are from the same

hometown, met in Oakland in 1981, sometimes went to work together, and visit each other and get together often.

4. The results of a polygraph examination of the applicant, performed by a certified polygraphist on February 22, 2003, showing that the applicant responded in the affirmative to three questions: Have you lived in the United States from June 1, 1981?; Have you lived in the United States consistently from June 1981 through today?; and, Other than a one month visit to Mexico in June 1987, have you consistently lived in the United States since 1981? The polygraphist concluded that, in his opinion, the applicant responded truthfully to all relevant test questions.

While not required, the letters and affidavits noted in Nos. 1, 2, and 3, above, are not accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. It is noted that the applicant indicated on a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), submitted in or about July 1994, that all of his siblings, including [REDACTED] (No. 1), were residing in Mexico. The affidavit from [REDACTED] (No.2) is somewhat vague – he does not state with any detail how he first met the applicant, what his relationship with the applicant was (other than that the applicant borrowed money from him to travel to Mexico in 1987), or how frequently and under what circumstances he saw the applicant during the requisite period. With regard to the affidavit from [REDACTED] (No.3), it also supplies little detail that would lend credibility to his claimed 21 plus year relationship with the applicant and provides no basis for concluding that he had direct and personal knowledge of the events and circumstances of the applicant's residence in the United States from 1981 through 1984.

In conclusion, the letters and affidavits lack detail and verifiable facts, and the evidentiary value is minimal as they rely completely on the veracity of the affiant's memories many years after the fact without credible accounts indicative of the applicant's residence and presence in the United States during the relevant period.

Furthermore, as stated by the district director in his denial of the application: "We are not persuaded by the results of the polygraph examination. Polygraphs are not necessarily reliable evidence. Furthermore, even if [the applicant] was telling the truth, he may be remembering when he thinks he entered rather than when he actually entered....[the applicant] was only 13 years of age at the time of his alleged entry in 1981."

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Here, the AAO determines that the applicant has not met his burden of proof. It is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he continuously resided in the United States in unlawful status from before January 1, 1982, through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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