

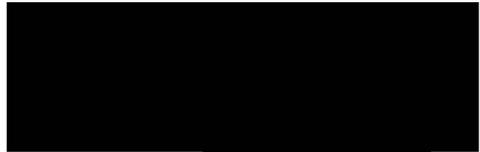
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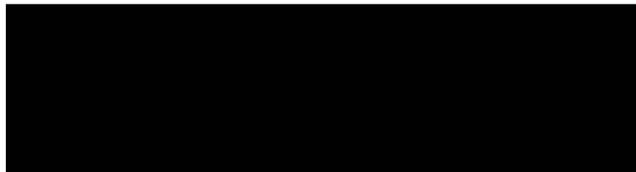
Office: SEATTLE

Date: **JUL 30 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, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant failed to establish that he resided in a continuous unlawful status from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant submits a brief and additional documentation.

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, on January 16, 2002. On October 31, 2002, the applicant was interviewed in connection with this application. At the conclusion of the interview, the applicant was requested to provide evidence of his continuous unlawful residence in the United States during the requisite time period. In response, the applicant submitted a letter stating that he had not been able to find any such additional evidence.

On June 25, 2003, the district director mailed the applicant a Notice of Intent to Deny (NOID) the application, and afforded the applicant 30 days in which to provide a response to the NOID. In response, the applicant resubmitted an additional document

In a Notice of Decision (NOD), dated August 11, 2004, the district director denied the application after determining that he had failed to submit credible, verifiable evidence to establish his eligibility for adjustment of status to permanent resident under the LIFE Act.

On appeal, counsel for the applicant asserts that the use of affidavits and declarations are adequate to establish continuous residence; the declarations submitted by the applicant are credible and verifiable; and, the corroborating evidence submitted by the applicant is credible.

A review of the record reveals that the applicant has provided the following evidence throughout the application process in an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988:

1. A fill-in-the-blank "affidavit of witness," dated September 13, 1990, from [REDACTED] of [REDACTED] California, stating that he and the applicant are good friends who meet regularly and celebrate religious festivities together. [REDACTED] lists the applicant's addresses in the United States as: San Jose, California, from October 1981 to

August 1983; Selma, California, from August 1983 to September 1989; and, Diamond Bar, California, from September 1989 to the date the affidavit was signed. The specific street numbers and names of the applicant's addresses in these locations were not provided by [REDACTED] and he did not list his telephone number for verification of the information provided. [REDACTED] did not state with any detail how he first met the applicant and is devoid of details that would lend credibility to his having had direct and personal knowledge of the events and circumstances of the applicant residence in the US during the requisite period.

2. A fill-in-the-blank "corroborative affidavit," dated September 22, 1990, from [REDACTED], stating that he "went to pick up [the applicant] when he first came into this country. I offered him financial support also. We are very good family friends. [The applicant] came to visit me and my family after his return from Canada." [REDACTED] did not indicate the date that he picked up the applicant and did not list his telephone number for verification of the information provided. [REDACTED] also did not state with any detail how he first met the applicant and is devoid of details that would lend credibility to his having had direct and personal knowledge of the events and circumstances of the applicant residence in the US during the requisite period.
3. A "statutory declaration," dated July 15, 1999, from [REDACTED] of [REDACTED] stating that he and the applicant are good friends and the applicant visited him in Toronto from September 1, 1987, to September 10, 1987. A second "declaration," dated October 13, 2004, from [REDACTED] reiterates the previously provided information. [REDACTED] only testifies to the applicant's presence in Canada in 1987 – he does not make any statements regarding the applicant's residence in the United States. As such, the declaration lacks probative value.
4. A "declaration," notarized on August 24, 1999, from [REDACTED] of [REDACTED], stating that he had known the applicant since 1982, and that he knows the applicant filed an "amnesty application" in or about October 1987 because he drove him to the INS<sup>1</sup> office in Fresno. [REDACTED] is also vague as to how he dates his acquaintance with the applicant, how often and under what circumstances they had contact during the requisite period, and lacks details that would lend credibility to his alleged 17 year relationship with the applicant.
5. A letter, dated October 18, 2002, from [REDACTED] stating that the applicant was seen as a patient on September 3, 1985, and December 19, 1985, for medical problems. A medical chart report indicates that the applicant was treated for abdominal pain, constipation, and abdominal discomfort. Although the applicant at the time was living in Selma,

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<sup>1</sup> The Immigration and Naturalization Service (INS), now known as Citizenship and Immigration Services (CIS).

