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**U.S. Citizenship
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FILE: [REDACTED]
MSC 02 241 62609

Office: SAN FRANCISCO

Date: **JUL 31 2008**

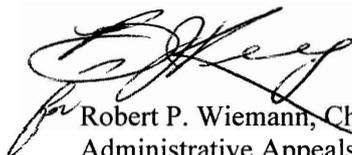
IN RE: Applicant:

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. 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 San Francisco, 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 country in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the applicant has submitted sufficient documentation to establish that he has resided in the United States continuously in an unlawful status since before January 1, 1982.

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 the Philippines who claims to have lived in the United States since June 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 29, 2002. 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 1990. They include the following:

- A letter from the manager of Senior Foot Care in Portland, Oregon, dated February 30, 1985, stating that the applicant was employed as a billing clerk from August 27, 1981 to February 27, 1985.
- A letter from the manager of H & E Electric in Blue Jay, California, dated March 25, 1987, stating that the applicant was employed as a stock boy since April 1985 at a salary of \$3.75 per hour, that he has been paid in full and left at his own wish.
- A letter from the administrator and owner of Hidalgo’s Guest Home in Santa Ana, California, dated August 8, 1989, stating that the applicant has been employed as a

“live-in houseparent” of the facility since June 1987 at an annual salary of \$6,000.00 paid in cash.

- An affidavit from [REDACTED] a resident of [REDACTED] California, dated May 17, 2002, stating that he has known the applicant since 1982 in Portland, Oregon, through a mutual friend and they have thereafter remained in contact with each other, and that he is aware that the applicant has been residing continuously in the United States since 1981 except for one absence from April 1986 to May 1986, when the applicant traveled to the Philippines.
- An affidavit from [REDACTED] a resident of San Leandro, California dated May 20, 2002, stating that he has known the applicant since 1981 through a mutual friend and they have thereafter remained in contact with each other, and that he is aware the applicant has been residing continuously in the United States since 1981, except for one absence from April 1986 to May 1986, when the applicant traveled to the Philippines.
- An affidavit from [REDACTED] a resident of San Jose, California, dated May 21, 2002, stating that he had known the applicant as a child in the Philippines back in the 1960s and 1970s during his brief visits to the Philippines, that the applicant’s family are close friends, and that he is aware that the applicant has been residing continuously in the United States since 1981, except for one absence from April 1986 to May 1986, when the applicant traveled to the Philippines.

In a Notice of Intent to Deny (NOID) and Request for Evidence (RFE), dated April 17, 2003, the director, notified the applicant that the evidence submitted is not sufficient to establish eligibility for the benefit sought, and requested the applicant to submit evidence of his unlawful status and continuous residence in the United States from January 1, 1982, through May 4, 1984, evidence of his visit to the Philippines in 1986, and evidence that his wife came to the United States to visit him. The applicant was granted 30 days to submit additional evidence.

In response, counsel asserts that the affidavits submitted by the applicant are sufficient evidence to establish his claim. The applicant submitted two letters from Philippine Airlines dated April 23, 2003, stating that they could not provide the evidence requested by the applicant because according to company policy, records are destroyed after five years.

On September 19, 2006, the director denied the application. While acknowledging that the applicant submitted extensive documentation in support of his residence in the United States from 1986, the director determined that the evidence submitted for the years 1981 through 1986 was not credible evidence because it was vague and unverifiable. The director concluded that the applicant failed to submit credible evidence of his continuous residence in the United States from before January 1, 1982 through May 4, 1988, as required for LIFE legalization.

On appeal, counsel asserts that the director failed to give proper weight to the evidence submitted by the applicant. Counsel asserts that the evidence submitted is sufficient to establish that the applicant resided in the United States from before January 1, 1982 through May 4, 1988. Counsel submitted no other documentation in support of the applicant's continuous residence in the United States from before January 1, 1982.

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 letters of "February 30, 1985" from [REDACTED] of Senior Foot Care, and [REDACTED] of H & E Electric dated March 25, 1987, fail to meet the regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), because they do not provide the applicant's address during the period(s) of employment, do not indicate whether or not the information was taken from official company records, where the records are located and whether CIS may have access to the records. Nor are they supplemented by earnings statements, pay stubs, or tax records demonstrating that the applicant actually had those jobs as a billing clerk and stock boy during any of the years claimed. In addition, the director, in the Notice of Decision, noted that the service was unable to verify the existence of Senior Foot Care as a licensed business between 1981 to 1985. While the applicant claims to have worked at Senior Foot Care from August 1981 through February 1985, the business does not appear to have been in existence during that period. Neither the applicant nor Ms. Shank provided any explanation as to how the applicant could have worked for a company when it was not in existence. The AAO also notes that the letter from Senior Foot Care, was dated February 30, 1985, and the month of February does not have 30 days.

The inconsistencies noted above undermine the applicant's credibility. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

For the reasons discussed above, the AAO determines that the employment letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988

The employment letter from [REDACTED] dated August 8, 1989, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. The letter was not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant actually had the job as a live-in houseparent during any of the years claimed. Additionally, the letter was not accompanied by any documentation from [REDACTED] of his own identity and presence in the United States during the 1980s. Finally, the letter does not claim that he knew the applicant before 1987. For the reasons discussed above, the AAO determines that this employment letter has little probative value and is not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 through 1988.

The affidavits by [REDACTED] dated May 17, 2002, by [REDACTED] dated May 5, 2002, and by [REDACTED] dated May 21, 2002, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. While [REDACTED] claim to have known that the applicant entered the United States in the early 1980s, [REDACTED] did not indicate when the applicant entered the United States. The affiants provide almost no information 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 were 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 addition, although the affiants all claim to have been aware that the applicant traveled to the Philippines from April 1986 to May 1986, they failed to indicate how they acquired that knowledge. 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.

The AAO notes that the applicant indicated on the Form I-485, which he filed on May 5, 2002, that he was issued a non-immigrant visa on December 16, 1985. According to the applicant's passport issued in Manila, Philippines on November 6, 1985, the non-immigrant visa was issued to the applicant in Manila, Philippines on December 16, 1985. This information is inconsistent with information on the applicant's Form I-687. On the Form I-687 filed by the applicant in 1990, the applicant listed only one absence from the United States, from April 18, 1986 to May 27, 1986. There is no listing of any absence from the United States in 1985.

The inconsistencies noted above undermine the applicant's claim that he entered the United States in 1981 and resided continuously in an unlawful status from before January 1, 1982 to May 4, 1988. As noted above, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the foregoing analysis of the evidence, the AAO determines 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.