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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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*Handwritten initials: @L2*

[Redacted]

FILE: [Redacted]  
MSC 03 248 61996

Office: DALLAS

Date: **JUN 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:

[Redacted]

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 District Director, Dallas, Texas, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding that the applicant failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in unlawful status from that date through 1984.

On appeal, counsel for the applicant asserts that the applicant submitted credible and verifiable evidence that he was continuously and physically present in the United States since before January 1982 through May 4, 1988. Counsel asserts that the affidavits and employment letters establish this by a preponderance of the evidence.

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 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 or 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 record reflects that on June 5, 2003, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On June 17, 2005, the applicant appeared for an interview based on his application. The interviewing officer issued the applicant a Request for Evidence (RFE), requesting that the applicant submit additional documents establishing his presence in the United States before January 1, 1982, through May 4, 1988.

On April 11, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application, finding that the applicant appeared ineligible to adjust status under the LIFE Act because the evidence submitted did not establish that he entered the United States before January 1, 1982, and resided continuously in the United States in unlawful status from that date through 1984. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information he felt would overcome the stated reasons for denial.

On July 5, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel asserts that *that the applicant submitted credible and verifiable evidence that he was continuously and physically present in the United States since before January 1982 through May 4, 1988. Counsel asserts that the affidavits and employment letters establish this by a preponderance of the evidence.*

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States before January 1, 1982; his continuous residence from January 1, 1982, through May 4, 1988; and, his continuous physical presence in the United States during the requisite period.

The record of proceeding contains the following evidence relating to the requisite period:

Employment Letters

- A letter from [REDACTED] of the Human Resources office of J. Wilcoxon, Inc., d/b/a Sod Busters. Ms. [REDACTED] stated that the applicant worked in the company's installation department from 1986 through 1988; and,
- A letter from [REDACTED] supervisor, dated April 4, 1989. Mr. [REDACTED] stated that the applicant worked as an assembler at Trussway Barns, from June 12, 1984, until he quit in December 1984.

Affidavits

- An affidavit dated May 2, 2006, from [REDACTED], the applicant's uncle. [REDACTED] states that the applicant lived at his residence from November 1981 thru 1984. He states that when the applicant arrived he gave him room and board and that when he arrived, the applicant was a minor. He does not date his recollection of when his nephew arrived in the United States and came to live with him. He also fails to provide sufficient details regarding the claimed time period the applicant lived with him. This affidavit has minimal weight as evidence of the applicant's residence in the United States during the requisite period;
- An affidavit dated August 23, 2005, from [REDACTED] the applicant's uncle. [REDACTED] states that the applicant lived at his brother's residence from November 1981 thru 1984. He states that when the applicant arrived he gave him room and board and that when he arrived, the applicant was a minor. He does not date his recollection of when his nephew arrived in the United States and went to live with his brother. As such, this affidavit has minimal weight as evidence of the applicant's residence in the United States during the requisite period;
- A fill-in-the-blank affidavit, notarized on August 9, 1990, from [REDACTED]. Mr. [REDACTED] stated that he knew the applicant was a resident in Forth Worth, Texas, from November 1981 to the time the affidavit was written in 1990. He does not indicate the addresses where the applicant resided in during this time period. He also fails to provide sufficient details regarding his claimed knowledge of the applicant's residence in Forth Worth, Texas, for over 9 years. This affidavit has minimal weight as evidence of the applicant's residence in the United States during the requisite period;
- A fill-in-the-blank affidavit, notarized on August 9, 1990, from [REDACTED]. Mr. [REDACTED] stated that he knew the applicant worked on personal business in Florida, from December 1986 to November 1988. He does not indicate the addresses where the applicant resided in during this time period. He also fails to provide sufficient details regarding his claimed knowledge of the applicant's

residence in Forth Worth, Texas, and business in Florida. This affidavit has minimal weight as evidence of the applicant's residence in the United States during the requisite period;

- A fill-in-the-blank affidavit, notarized on August 9, 1990, from [REDACTED] stated that he knew the applicant worked at Trussway Barns from July 1984 to December 1984; and,
- A fill-in-the-blank affidavit, notarized on August 9, 1990, from [REDACTED] Mr. [REDACTED] stated that he knew the applicant had been living with his uncle, [REDACTED] from November 1981 to the time the affidavit was written in 1990. He does not indicate the address(es) where the applicant resided in during this time period. He also fails to provide sufficient details regarding his claimed knowledge of the applicant's residence in Forth Worth, Texas, for over 9 years. This affidavit has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

#### Church Letter

- A letter from [REDACTED], Assistant Parroquial Administrator, attesting that the applicant has been a registered member of the Holy Name Church since June 1982.

These documents can be given little evidentiary weight and have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period, as they all lack sufficient detail. Regarding the applicant's claimed entry into the United States before January 1, 1982, there is no statement by anyone who claims to have personal knowledge of such entry. The duplicative language and use of forms also detract from the probative value of the affidavits. Furthermore, the employer letters and one church letter fail to meet regulatory standards set forth in 8 C.F.R. § 245a.2(d)(3)(i) and 8 C.F.R. § 245a.2(d)(3)(F)(v).

#### Additional Letter

- A letter from the Dent Law Firm attesting that the firm represented the applicant in a worker's compensation claim in connection with injuries he sustained in an on the job accident which occurred on September 10, 1984, while working for Trussway-Barnes, Inc. The letter attests that the firm represented the applicant from September 4, 1984, to July of 1985.

While sufficiently detailed, this letter is of little probative value as it only covers one year during the required statutory period from before January 1, 1982, through May 4, 1988.

Although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States in November 19, 1981, near Ciudad Acuna, Texas, and to have resided for the duration of the requisite period in Texas. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.