



U.S. Citizenship  
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[Redacted]

FILE:

[Redacted]

Office: BALTIMORE, MD

Date: JUN 23 2008

MSC 03 246 60128

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. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

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 (director), Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 absence of contemporaneous evidence is not necessarily fatal to the applicant’s claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

Documentary evidence may be in the format prescribed by CIS regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and “state the employer’s willingness to come forward and give testimony if requested.” *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a “relevant document” under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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.<sup>1</sup>

At issue in this proceeding is whether the applicant has submitted 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.

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<sup>1</sup> 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).

The record indicates that on or near November 25, 1991, 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 June 3, 2003, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains documents that relate 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, including:

1. The applicant's statement dated September 6, 2004 on which the applicant listed his absences from the United States from 1984 through 2000. He also listed the purpose of each of his trips outside the United States. The applicant included the following. From January 1984 through March 1984, he was in Mexico for approximately 60 days to visit his family. From May 1985 through August 1985, the applicant was in Mexico for approximately 90 days to visit his family. The applicant indicated that he was not outside the United States at any other time during the statutory period.
2. The Form I-485 which indicates at Part 3, item B that the applicant's daughter, [REDACTED] was born in Mexico on November 2, 1984, and his son, [REDACTED] was born in Mexico on February 9, 1986.
3. The Form I-687 which the applicant signed under penalty of perjury on November 25, 1991. At item 35 of this form, the applicant stated that from March 25, 1988 through April 10, 1988, he was absent from the United States and in Mexico for a family emergency. The applicant indicated on this form that this was his only absence from the United States during the statutory period.
4. The affidavit of employment written by [REDACTED], the owner of the [REDACTED] Trading Company, and dated November 9, 1991. On this affidavit, the affiant attested that the applicant began working for [REDACTED] Trading Company during June 1987. The affiant also attested that the applicant had been in the United States since 1981.
5. The statement of [REDACTED], the president of [REDACTED] Trading Corporation, on [REDACTED] Trading Corporation letterhead stationery which is not dated. In this document, [REDACTED] stated that the applicant had worked for [REDACTED] Trading Corporation from the beginning of 1986 through the unspecified date that this statement was signed.
6. The Form I-687 on which the applicant indicated at item 36 that he worked for [REDACTED] Trading Corporation, New York City from December 1986 through the date that he signed that form, November 25, 1991; and that he was self-employed as a handyman in Corona, New York from November 1981 through December 1986.
7. The affidavit of [REDACTED] of New York City dated October 31, 1991 in which the affiant attested that from August 1982 through December 1986, the applicant worked for him at one of the Jewel Shops, where the affiant conducted business, and that the applicant got along well with the other members of the staff at the Jewel Shop.

8. Eight envelopes which are addressed to the applicant at an address in the United States which the applicant indicated were mailed to him during the statutory period. The envelopes are stamped with dates that are not legible. It is also not clear from the stamped dates if they are part of a postmark or not, as there is no reference to the Mexican post in these stamps. Three of the envelopes have a large tan, green and red postage stamp which reads *Solidaridad Responderle mas a los que menos tienen*. This postage stamp states on its face that it has an issue date in 1990. Also, the *2006 Scott Standard Postage Stamp Catalogue Volume 4* (Scott Publishing Company 2005) at page 805 lists this stamp's date of issue as August 8, 1990.

On September 15, 2005, the director issued a Notice of Intent to Deny (NOID) which indicated that the applicant had failed to demonstrate continuous residence in the United States during the statutory period.

At the outset, the AAO notes that in the NOID the director indicated that because a certain affidavit in the record was written by the applicant's brother, it is not probative. The director also indicated that in general affidavits which are not supported by independent, contemporaneous evidence are not probative. These points in the NOID are withdrawn. CIS must consider the affidavits of family members and others, and determine the extent of their probative value. That is, an applicant is not in all cases required to present contemporaneous evidence of continuous residence. *See Matter of E-M-*, 20 I&N Dec. 77 at 82-83. Affidavits, including the affidavits of family members, which are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.* Affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Yet, when determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*<sup>2</sup>

In the NOID, the director pointed out discrepancies in the record relating to the applicant's claim that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988. For example, the director stated that the applicant had submitted two statements from the [REDACTED] Trading Corporation. One stated that the applicant worked for this company from June 1987 through the date that that statement was dated in 1991, and the other stated that the applicant worked for that company from the beginning of 1986 through the unspecified date that the letter was signed. The director indicated that such inconsistent statements undermined the credibility of the applicant's evidence. The director also indicated that the [REDACTED] employment letter, which indicates that the applicant began working for [REDACTED] at the beginning of 1986, is contradicted by the [REDACTED] affidavit of employment which indicates that the applicant was employed by [REDACTED] at the Jewel Shop until December 1986.

The director stated that because of these and other contradictions in the record, he had concluded that the applicant had failed to establish continuous residence in the United States throughout the statutory period. For these reasons, the director intended to deny the application.

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<sup>2</sup> The director also indicated that, because the applicant provided only affidavits rather than providing primary evidence, he had failed to establish that the marriage to the beneficiary was not entered into to avoid immigration laws. The AAO withdraws this point as well. The director apparently intended to state that the applicant had not established continuous residence, rather than that he had failed to establish that a *bona fide* marriage existed, an issue that does not pertain to these proceedings.

On rebuttal, counsel asserted that faulty, human memory is what prompted the inconsistencies in the [REDACTED] Trading Corporation employment letters, namely that one listed the applicant as beginning his employment at that company during approximately January 1986 and the other listed this employment as beginning in June 1987. The applicant submitted a new affidavit from [REDACTED] the co-owner and manager of [REDACTED] Trading Corporation, dated November 15, 2005. In this affidavit, [REDACTED] attested that the applicant worked six days a week at his company from June 1987 through April 2000. He also indicated that the applicant did not take any leaves of absence to visit Mexico until about two years after he started working at [REDACTED]. Counsel urged the director to consider the June 1987 start date at [REDACTED] as the accurate date. Counsel also stated that other evidence in the record serves to confirm that the applicant was in the United States during January 1986 through June 1987. In addition, counsel indicated that there is no inconsistency between the [REDACTED] affidavit of employment which states that the applicant worked for [REDACTED] from August 1982 through December 1986 and the [REDACTED] letters of employment in the record, if the director accepts the June 1987 [REDACTED] start date as indicated on the affidavit dated November 15, 2005 as being the accurate start date. Counsel then suggested that in the alternative, if the applicant did begin working at [REDACTED] during the beginning of 1986, he must have worked at the two jobs, [REDACTED] and [REDACTED]'s firm, simultaneously.

Counsel also asserted that the fact that there are some inconsistencies in the evidence tends to support the finding that the evidence is credible. According to counsel, inconsistencies demonstrate that there clearly was not a preparer informing all those who submitted statements exactly what to write. Instead, those who provided statements each relied on his or her individual, imperfect memories. Counsel indicated that slight differences are to be expected in personal statements.

On September 9, 2006, the director denied the application based on the reasons set out in the NOID. The director pointed out that counsel only provided a third statement from [REDACTED] Trading Corporation, and did not provide any independent, documentary evidence to support the claim that the applicant began working with this company during June 1987, rather than January 1986. Also, the director contacted [REDACTED] of [REDACTED] Trading Corporation to request documentary evidence that the applicant worked for [REDACTED] and was told that no such evidence was available.

In addition, the director stated that on rebuttal the applicant had not overcome the many discrepancies in the evidence set forth in the NOID.

On appeal, counsel asserted that the applicant had established that he had resided continuously in the United States throughout the statutory period. First, he suggested that it is not proper for the director to draw any negative inference from the fact that the applicant's former employer no longer has records of his employment dating back more than 20 years. The AAO concurs with this specific assertion from counsel.

Counsel also claimed that the director may not impose upon the applicant the burden to demonstrate that he was never absent from the country for more than 45 days during the statutory period, when there is no evidence in the record to indicate that he was outside the United States for more than 45 days in a single absence. The AAO concurs with this assertion in the abstract. However, the AAO would note that the applicant provided a signed statement in which he specified that he was outside the United States for approximately 60 days during 1984 and for approximately 90 days during 1985. He stated that on both occasions he had returned to Mexico to visit family. As such, there is evidence in the record that the applicant

was outside the United States for more than 45 days in a single absence on two occasions during the statutory period, and that he remained outside the country for more than 45 days for non-emergent reasons.

Finally, counsel asserted that in general when reviewing the applicant's evidence the director failed to take into consideration the impact of the passage of so many years since the statutory period on the applicant's ability to gather contemporaneous evidence, additional affidavits and other proof of his continuous residence in the United States during the statutory period.

The applicant submitted many contradictory statements regarding his employment in the United States during the statutory period. Two statements from the [REDACTED] Trading Corporation indicate that the applicant began working for this company in June 1987. Another statement indicates that the applicant worked for [REDACTED] from the beginning of 1986 through the unspecified date on which that statement was signed. This last statement is contradicted by the [REDACTED] affidavit of employment which indicates that the applicant was employed by [REDACTED] at the Jewel Shop from August 1982 until December 1986. All three [REDACTED] statements are inconsistent with the applicant's own statement on the Form I-687 which indicates that the applicant began working for [REDACTED] Trading Company in December 1986. Then, when attempting to reconcile these inconsistencies the applicant through counsel made additional contradictory assertions. First, he submitted into the record the third statement from [REDACTED] that indicates that the applicant began working for that company in June 1987, and urged the director to consider this the applicant's accurate start date at [REDACTED]. In the alternative, the applicant suggested through counsel that he did begin working for [REDACTED] during the beginning of 1986 while simultaneously working for [REDACTED].

These many discrepancies in the record cast serious doubt on the authenticity of all the evidence submitted. This in turn casts 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.

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).

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 throughout the statutory period. Contrary to counsel's assertions, it is not sufficient for the applicant to attempt to explain such direct contradictions as being the consequence of simple human error and faulty memories. Also these many contradictions are not, as counsel indicated, minor discrepancies which are to be expected in any set of credible evidence.

The applicant failed to provide any contemporaneous evidence that might be considered independent, objective proof of his having resided in the United States from a date prior to January 1, 1982 and throughout the statutory period. As noted by the director, the eight envelopes in the record which the applicant claimed were sent during the statutory period are stamped with dates that are not clearly legible, and thus are not probative. The AAO would also underscore that the postage stamp which reads *Solidaridad Responderle mas a los que menos tienen* which is placed on three of the envelopes which the applicant purports were sent during different years throughout the statutory period, states on its face that this postage stamp has an issue date in 1990.

The AAO also finds that the various statements, affidavits and hand-written receipts in the record which purport to substantiate the applicant's residence in the United States 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 a date prior to January 1, 1982 through May 4, 1988, and that these documents do not have probative value in this matter.

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. 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.