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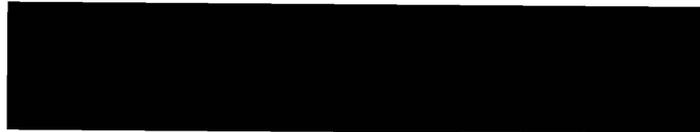
MSC 01 362 60015

Office: HOUSTON, TEXAS

Date: **MAR 26 2008**

IN RE:

Applicant:



PETITION: 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 [or 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 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 in Houston, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application on the ground that the applicant failed to respond to a request for evidence to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, the applicant asserts that he did respond to the request for evidence and provides a copy of the previously submitted letter.

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 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 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 applicant filed her application for permanent resident status under the LIFE Act (Form I-485) on September 27, 2001. In a Notice of Intent to Deny (NOID), dated December 13, 2004, the district director cited some inconsistencies in the verbal testimony, sworn statements, and documents the applicant had submitted which cast doubt on the credibility of his claim to have entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through May 4, 1988. Referring to the applicant’s claim that since his illegal entry into the United States on January 1, 1981, he had departed the United States only once – for 35 days in May and June 1987 – to visit his ill mother in Guatemala, the district director indicated that this information appeared to conflict with information in the record that two of the applicant’s children were born in Guatemala in February 1983 and October 1985. The district director also noted that the applicant’s W-2 forms (Wage and Tax Statements) for the years 1981-1985 identified a different social security number than the one used by the applicant on his federal income tax returns beginning in 1991, which appeared to contradict the applicant’s claim that he never filed an income tax return using a different social security number. The applicant was granted thirty days to submit additional evidence to clear up these inconsistencies.

On March 7, 2005 the director denied the application on the ground that the applicant did not respond to the NOID and therefore had failed to establish that he entered the United States before January 1, 1982 and had resided continuously in the United States from then until May 4, 1988.

The applicant filed a timely appeal, asserting that he also responded in a timely manner to the NOID. The applicant submitted a copy of a letter dated January 3, 2005, which he states was mailed to the New York District Office on January 5, 2005. The record contains the original letter as well, which bears a receipt stamp indicating that it was initially received at the New York District Office on January 7, 2005. In his letter the applicant provided some explanations for the apparent inconsistencies in the evidence cited by the district director. The applicant indicated that his wife was in the United States illegally between 1981 and 1986, in contradiction to the statement he made in his 2003 interview that she was never in this country. He also indicated that his wife returned alone to Guatemala about a month before the births of her children in February 1983 and October 2005, left them in the care of relatives when she returned to the United States after each birth, and returned to Guatemala permanently to raise the children herself in 2006. Thus, the applicant maintains that he did not return to Guatemala for the birth of either child, leaving his 35-day visit to his dying mother in May and June 1987 as his only departure from the United States between 1981 and 1988. The applicant also maintains that he spoke truthfully when he said at his interview that he never filed an income tax return with other than his own social security number because he did not file any return until 1991, included his true number on that and later returns, and did not file any income tax returns for earlier years like 1981-1985 when his W-2 forms included a different social security number. The applicant identified that number as “not real” on the Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), he filed in connection with his CSS class membership claim in January 1991.

The record contains the following evidence of the applicant’s residence and physical presence in the United States during the 1980s: (1) letters from two employers in Houston, Texas – Southern Business Forms and Western Business Systems – on company letterhead stating that the applicant worked at their companies as a maintenance man from February 1981 to March 1985 and from April 1985 to February 1990, respectively; (2) Form W-2 Wage and Tax Statements from the first employer for the years 1981 to 1985; (3) an affidavit from an individual identified by the applicant as his co-tenant in Houston, who lists three residential addresses they shared from January 1981 to March 1991; (4) periodic receipts over the years for monthly payments by the applicant to his co-tenant between February 1981 and February 1991; (5) various merchandise receipts from the years 1981 to 1989, most of which do not identify the applicant as the customer; (6) a letter from a church pastor in Houston, Texas, stating that the applicant has been a member of the church since February 1981; and (7) affidavits from two other individuals who claim to have known the applicant since February 1981 and December 1983, respectively.

While the foregoing documentation, in particular the W-2 forms from the applicant’s employment with Southern Business Forms, represents pretty good evidence of the applicant’s continuous residence in the United States during the years 1981 to 1985, the documentation is less persuasive for the time period after that employment. The applicant has provided no W-2 forms from his employment with Western Business Systems from 1985 to 1990. While the letter from “Manager” [REDACTED] dated March 4, 1991, states that the applicant was employed by the company as a maintenance man from April 1985 to February 1990, the letter does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it was not prepared as a sworn

affidavit and did not identify the applicant's address during his time of employment. Furthermore, the AAO has contacted the owner of Western Business Systems during the 1980s, [REDACTED], who states that he never had a manager by the name of [REDACTED] and that he has no recollection of any employee with the applicant's name.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i), the AAO sent the applicant a letter on March 5, 2008, notifying him of this derogatory information from [REDACTED]. The AAO granted the applicant 15 days to submit additional evidence addressing, explaining, and rebutting the evidentiary discrepancy presented by [REDACTED]. The applicant has not responded to the AAO's notice.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence reflects on the reliability of the petitioner's remaining evidence.

The affidavit from [REDACTED] z, who claims to have been the applicant's co-tenant beginning in January 1981, was prepared on March 13, 1991. In it he states that he and the applicant had been "roommates" for the past ten years at the following addresses in Houston, Texas: (1) from January 1981 to March 1986 at [REDACTED] (2) from April 1986 to April 1990 at [REDACTED] and (3) from May 1990 to the present at [REDACTED]

Supplementing the affidavit are photocopied monthly rental receipts dated February 20, 1981; August 26, 1981; May 3, 1982; April 6, 1983; September 4, 1984; April 4, 1985; June 6, 1986; January 3, 1987; May 7, 1988; February 4, 1989; June 2, 1990; October 4, 1990; and February 3, 1991. While the receipts are signed by [REDACTED] they lack any date stamps or other official markings to bolster their authenticity. The affidavit has a fill-in-the-blank format that provides remarkably little information about the affiant's reputed decade-long relationship with the applicant. No further evidence has been submitted to establish that Mr. [REDACTED] himself was present in the United States during the 1980s. The AAO concludes that the foregoing documentation is insufficiently probative to establish that the applicant was continuously resident in the United States from before January 1, 1982 through May 4, 1988.

The merchandise receipts from the 1980s lack important indicia of authenticity. Many of them do not identify the purchaser, and the four that do identify the applicant as the customer do not identify the store. In fact, each of the four receipts identifying the applicant lacks a company letterhead, a company logo, a date stamp, or any other official marking to demonstrate its legitimacy and that it dates from the 1980s. Accordingly, the receipts have no evidentiary weight.

The remaining evidence of residence during the 1980s consists of a letter from a church pastor in Houston, Texas, dated March 6, 1991, who states that the applicant has been an active member of the church since February 1981; a fill-in-the-blank affidavit from an individual in Houston, dated March 18, 1991, who states that he has known the applicant since February 1981 and that

they worked together at Southern Business Systems (1981-1985); and an affidavit from another individual in Houston, dated March 20, 1991, stating that he has known the applicant since December 1983. The foregoing letter/affidavits are not supported by any documentation of the authors' own identity and presence in the United States during the pertinent years of 1981-1988, which calls into question the basis of their knowledge that the applicant was resident and physically present in the country during that time period. The church pastor did not indicate whether his information on the applicant is based upon personal knowledge or court records, offered no information as to when he actually met the applicant and under what circumstances, and did not provide any address(es) for the applicant during the 1980s. The two affidavits from acquaintances were also woefully short on substance, failed to specify any address(es) for the applicant during the 1980s, and provided few details as to the extent of the affiants' interaction with the applicant. Thus, the letter and the affidavits have little evidentiary weight.

Based on the foregoing analysis, the AAO concludes that the applicant has failed to overcome the grounds for denial. He has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from then 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 section 1104 of the LIFE Act. The appeal will be dismissed, and the application denied.

It is also noted that the applicant was arrested by the Police Department in Houston, Texas, on a charge of driving while intoxicated on February 2, 1991, as indicated in a Federal Bureau of Investigation (FBI) fingerprints result report. In any future proceedings before U.S. Citizenship and Immigration Services (CIS) the applicant must furnish the final court disposition of that arrest.

ORDER: The appeal is dismissed.