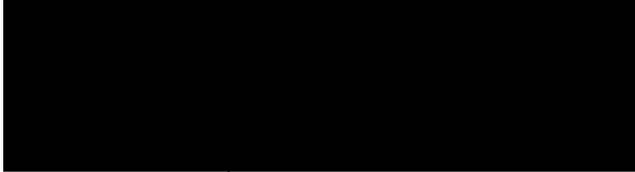


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FILE: [REDACTED] Office: LOS ANGELES Date: **MAY 12 2008**
MSC 04-184-15440

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).

IN BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, Los Angeles, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act on June 22, 2006. The decision was appealed to the Administrative Appeals Office (AAO). The AAO rejected the appeal on October 2, 2007, finding that it had been untimely filed. The applicant, through counsel, has now submitted a Motion to Reopen along with proof that the appeal was timely filed. In response, the AAO has *sua sponte* reopened its prior decision.¹ The AAO's decision of October 2, 2007 will be withdrawn. The appeal will be dismissed.

The director determined in a Notice of Intent to Deny (NOID), dated April 6, 2006, that the applicant had not provided evidence to adequately establish 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 noted that the applicant's testimony and the documents he submitted indicated that he entered the United States on February 25, 1984 with a B-2 nonimmigrant visitor visa with authorization to remain until February 20, 1985. The director concluded that the applicant had not proven that he violated his B-2 status prior to January 1, 1988. The applicant did not respond to the NOID, and the director subsequently denied the application for the reasons contained in the NOID.

On appeal, the applicant, through counsel, submits a brief and asserts that he has shown by a preponderance of the evidence that he resided unlawfully in the United States for the requisite period and is eligible for a grant of lawful permanent residence under the LIFE Act. The applicant also asserts that the director failed to fairly evaluate the evidence submitted in support of his application and gave undue weight to his 1984 lawful entry, noting that such an entry does not represent a break in continuous unlawful residence.

The AAO agrees that the director erred regarding the relevance of the applicant's lawful entry with a B-2 nonimmigrant visa in 1984 and regarding the requirement to show that he had violated his status prior to January 1, 1988, as this is not a requirement for eligibility for permanent resident status under the LIFE Act.² The AAO also agrees that the director failed to fairly evaluate the affidavits submitted by the applicant. However, despite these errors, the AAO finds that the applicant did not provide sufficient evidence to establish that he resided in the United States in a continuous unlawful status for the requisite period. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.³

¹ Motions to reopen a proceeding or reconsider a decision on an application for permanent resident status under section 1104 of the LIFE Act are not considered. 8 C.F.R. § 245a.20(c). The AAO may, however, *sua sponte* reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

² If the record reflects, as in this case, a lawful entry on a nonimmigrant visa to the United States, where the applicant claims to have been residing unlawfully, the visa would have been obtained through fraud or misrepresentation. The applicant would thus be inadmissible under section 212(a)(6)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C), and may apply for a waiver. 8 C.F.R. § 245a.2(b)(10). His period of continuous unlawful residence, however, is not broken, as he would be returning to "an unrelinquished unlawful residence." 8 C.F.R. § 245a.2(b)(9); *LULAC v. INS*, 956 F.2d 914 (9th Cir. 1992).

³ 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).

An applicant for permanent resident status under section 1104 of the LIFE Act (Life Legalization applicant) must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States, and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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.* at 80. 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to 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). 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).

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case the applicant applied for such class membership by submitting a “Form for Determination of Class Membership in *CSS v. Meese*” accompanied by a Form I-687 “Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act),” dated September 13, 1990. On April 1, 2004 the applicant filed Form I-485, “Application to Register Permanent Resident or Adjust Status,” pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States since a date prior to January 1, 1982 through May 4,

1988. The applicant has provided a copy of his passport containing a B-2 nonimmigrant visa to the United States showing that he entered the United States on February 25, 1984, and he has submitted credible affidavits from an aunt and a former employer indicating that he resided in the United States thereafter during the requisite period. He has not, however, provided credible evidence that he entered and resided in the United States before 1984, and has thus not met his burden.

Regarding the requisite period before 1984, the applicant has provided the following evidence:

- An affidavit from [REDACTED], dated July 6, 1990. Ms. [REDACTED] identifies herself as a housewife residing in Whittier, California; she provides her address and telephone number and offers to testify and answer any questions relevant to the applicant's residence. She states that she has known the applicant since October 1981, "when he came to live with [her] at [REDACTED] Maywood, CA. He stayed at [her] house until June of 1984." She adds that he was a responsible young man and he always attended to his business and that he was a hard worker whom she respected for his good moral character. Although the dates and place of residence are consistent with information provided by the applicant on his 1990 Form I-687, the statement lacks any details regarding how she became acquainted with the applicant or why he, a child of 13 in 1981, was living with her, not attending school and not residing with his parents or other relative. The affidavit also fails to indicate any knowledge of the applicant's travel to or entry into the United States or the circumstances regarding his move to the United States as a child. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period.
- The applicant's statements and application forms, and his counsel's brief, claiming that he first entered the United States in October 1981. In her brief, counsel adds that the applicant lived with his uncle and aunt and helped his uncle at his place of business, but there is no evidence in the record to support this claim or any claim of entry before 1982, other than the one affidavit noted above. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry prior to January 1, 1982 and residence in 1982 and 1983 are supported by only one affidavit, which has minimal probative value for the reasons described above. Moreover, the applicant, who would have been 13 years old in October 1981, when he claims to have entered the United States, does not claim to have attended school or to have been employed at any time until after his entry in 1984. The applicant has failed to provide any evidence from or about any responsible adult regarding the circumstances of his travel to and residence in California as a child or how he survived as a child until 1984.

The absence of credible and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, particularly regarding the period before his

documented entry in 1984, seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance on only one affidavit, which lacks relevant details, and the lack of any additional credible evidence of his entry and residence in the United States from prior to January 1, 1982 and for the years 1982 and 1983, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.