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FILE: [REDACTED]
MSC 02 248 64800

Office: LOS ANGELES

Date: MAY 22 2008

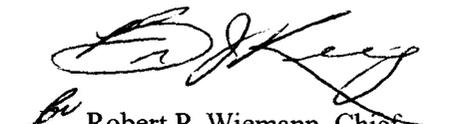
IN RE: Applicant: [REDACTED]

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: Self-represented

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 Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that he entered the United States before January 1, 1982, resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal the applicant submits some photocopied documentation, most of which was already in the record.

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).

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 Mexico who claims to have lived in the United States since September 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 5, 2002. As evidence of his qualifying continuous residence and continuous physical presence in the United States the applicant submitted a series of affidavits prepared in May 2002 by residents of Greater Los Angeles who claim to have met the applicant in the United States at various times during the 1980s – from as early as the fall of 1981 to as late as December 1988 – in addition to assorted documentation from the years 1986-1990 such as a pay statement, Western Union receipts, letters from the Selective Service System and the Internal Revenue Service, a California driver's license, and correspondence from the Immigration and Naturalization Service (now Citizenship and Immigration Services).

On January 20, 2006 the director issued a Notice of Intent to Deny (NOID), stating that the documentation of record, together with the oral testimony offered at his interview for LIFE legalization, was insufficient to establish that the applicant entered the United States before January 1, 1982, and resided in the United States in continuous unlawful status from that date through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant submitted copies of previously submitted documents, and some new affidavits prepared in February 2006 by the same individuals who had prepared earlier affidavits in 2002.

On March 4, 2006 the director denied the application, stating that the evidence submitted by the applicant failed to establish his entry into the United States before January 1, 1982, his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

On appeal the applicant resubmits copies of documents already in the record, and supplements them with several new documents dated after May 4, 1988. Thus, the materials submitted on appeal do not include any additional evidence of the applicant's residence and physical presence in the United States during the requisite periods for LIFE legalization. As before, the only evidence of the applicant's residence and presence in the United States before 1986 are some

weak affidavits from individuals who claim to have met him in the Los Angeles area in 1981, 1982, or 1983, but provided virtually no information about the applicant such as where he lived at that time, where he worked, or any other details about his life in the United States. Nor did the affiants provide any documentary evidence, such as photographs or letters, demonstrating their personal relationship to the applicant. Accordingly, the affidavits have little evidentiary weight.

The AAO also notes that a number of documents in the record identify U.S. addresses for the applicant in the years 1987 and 1988 – including [REDACTED] and [REDACTED], both in North Hollywood – that differ from the address the applicant claimed in the application for temporary resident status (Form I-687) he filed in 1990, in which he listed [REDACTED] in Sylmar, California, as his address during the years 1987-1989. Moreover, a letter to the applicant from the Selective Service System, dated February 3, 1988, was sent to a “current address” in Mexico. 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). Doubt cast on any aspect of the applicant’s evidence also reflects on the reliability of the applicant’s remaining evidence. *See id.*

In view of the conflicting information discussed above, and the applicant’s reliance upon affidavit evidence with minimal probative value, the AAO determines that the applicant has failed to establish that he entered the United States before January 1, 1982, resided in the United States in continuous unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required for legalization under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). Accordingly, the applicant is ineligible for adjustment to 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.