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FILE: [REDACTED] Office: NEW YORK Date: **MAY 27 2008**  
MSC 01 349 60762

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:



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

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status for the requisite statutory time period.

On appeal, counsel for the applicant asserts that the applicant has met his burden of proof and the explanation provided by the applicant is plausible given the way of life of an undocumented alien.

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.

"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. Although "*emergent reasons*" is a term that is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

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 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.

In the Notice of Intent to Deny (NOID), dated July 13, 2006, the director observed that the evidence in the file conflicted with the applicant's oral testimony given at an interview. The director noted that the applicant stated that he had never received a visa to enter the United States between January 1, 1982 and May 4, 1988. The director found, however, that CIS records revealed that the applicant had been given a nonimmigrant visa that had been issued in Guatemala on August 1, 1986 and that the applicant had entered the United States on this visa on March 23, 1987. The director indicated that if the applicant had received the visa on August 1, 1986 in Guatemala and had not entered into the United States until March 23, 1987, the applicant's unlawful residence in the United States was not continuous; but was instead broken by an absence far in excess of a single absence of 45 days. The director indicated further that the applicant had not offered evidence that his return to the United States could not have been completed during the allowed period due to emergent reasons. The director also noted that the birth of the applicant's children in Guatemala on April 20, 1983, January 6, 1986, and November 21, 1987 called into the question the veracity of the applicant's claim of residing continuously in the United States from January 1, 1982 for the requisite time periods.

In rebuttal, the applicant submitted his August 1, 2006 notarized statement in which he stated that he had returned to Guatemala in 1982 and 1985 for no more than a month and then again in 1986. The applicant stated that on the August 1986 trip he applied for a visa and entered the United States in August 1986 and that for some reason his entry into the United States in August 1986 does not appear in his immigration record. The applicant stated that he returned to Guatemala in February 1987 and re-entered the United States on March 23, 1987; thus his total absences do not exceed 180 days and no absence is more than 45 days.

On August 28, 2006, the director denied the application. The director determined that the submitted affidavit was self-serving and that the applicant had changed events to explain away the inconsistencies found upon review. The director found that the applicant had not submitted sufficient evidence to overcome the grounds of denial. The director again noted the birth of the applicant's children in Guatemala during the statutory period and questioned the veracity of the applicant's statements regarding the applicant's residence in the

United States during the requisite period. The director determined that the information provided by the applicant did not establish by a preponderance of the evidence that the applicant met the requirements to adjust status under the "LIFE" Act.

Counsel for the applicant does not submit additional documentation on appeal, but re-submits the applicant's August 1, 2006 statement. Counsel asserts that the applicant's statement is sufficient to sustain his burden of proof as the statement is plausible.

Counsel's assertion is not persuasive. As referenced above, the evidentiary standard in this matter requires that the totality of 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. at 79-80.

In this matter, the record contains numerous inconsistencies. For example, on the applicant's Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), the applicant lists the dates of birth of his children as in April 1984, June 1988, and November 1987. The applicant also indicates that he left the United States and returned to Guatemala in June 1983 to visit family and get married. The record contains a translation of the applicant's marriage certificate showing the applicant was married on April 22, 1982. The Form I-687 also notes absences from the United States to return to Guatemala in September 1985 and in November 1987 to December 1987. The record includes a May 10, 1990 affidavit, with an illegible signature certifying the applicant left the United States in November 1987 and returning in December 1987. Thus, the information the applicant provided on his Form I-687 is inconsistent with the evidence provided on the Form I-485 regarding the birth of the applicant's children and his absences from the United States. In addition, the information in the record provided on the Form I-687 and the Form I-485 is inconsistent with the applicant's statement provided in rebuttal to the NOID and re-submitted on appeal. The applicant has failed to explain or otherwise resolve the numerous inconsistencies in the record. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Upon review of the totality of the record and the numerous unresolved inconsistencies regarding the applicant's continuous unlawful residence in the United States for the statutory period, the applicant's addition of yet another undocumented absence and return is not plausible and does not demonstrate that the applicant's claim is "probably true."

The AAO notes that it has also reviewed the following:

- A May 31, 1990 affidavit signed by [REDACTED] certifying that the applicant lived at [REDACTED] in Brooklyn, New York from December 1, 1981 to February 28, 1987.

- An October 30, 1989 affidavit signed by [REDACTED] stating that the applicant resided in Brooklyn, New York from December 1981 to February 1987 and in Peconic, New York from March 1987 to present.
- An October 20, 1989 affidavit signed by [REDACTED] stating the applicant had resided in Peconic, New York from March 1987 to present.
- An October 20, 1989 signed by [REDACTED] stating that the applicant had resided in Peconic, New York from March 1987 to present.
- Three employer letters: (1) dated September 7, 1989 indicating the applicant had worked as a shipping helper from December 12, 1981 to July 1985; (2) dated August 10, 1989 indicating the applicant had worked as a general operator from August 1985 to February 1987; and (3) dated October 13, 1989 indicating the applicant had been employed since March 26, 1987 to the present time.
- A copy of an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, issued to the beneficiary for work performed in 1983; and the applicant's 1983 IRS Form 1040, U.S. Individual Income Tax Return for 1983.
- A June 14, 1984 affidavit indicating the applicant had opened a bank account in New York on January 11, 1982.
- Several money transfers dated March 20, 1982, October 15, 1982, and July 14, 1985 from the applicant to an individual in Guatemala.

The AAO finds that the affidavits do not include proof that the affiants were in the United States during the requisite time period and do not provide any substantive details of the events and circumstances surrounding the initial relationship and subsequent interaction between the affiants' and the applicant that is sufficient to establish the applicant's continuous presence in the United States for the requisite periods. The AAO does not find these affidavits probative as these affidavits do not contain corroborating detail of the relationship and interaction of the affiants and the applicant. The employer letters submitted do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) as the letters do not show periods of layoff, do not state the applicant's duties, do not declare whether the information was taken from company records, and do not 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 IRS Form W-2 and Form 1040 demonstrate only that the applicant was in the United States in 1983. Likewise, the money transfers and bank account affidavit do not demonstrate continuous residence in the United States for the requisite time period.

The applicant has not provided contemporaneous, credible evidence of his continuous residence in the United States prior to January 1, 1982 through May 3, 1988. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the submission of inconsistent evidence seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 upon documents with minimal probative value and the numerous discrepancies regarding his absences from the United States, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, for the requisite time period.

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 to 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.