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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: LOS ANGELES Date: **MAY 28 2008**
MSC 03 123 60740

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. 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, Los Angeles, 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 through May 4, 1988.

On appeal, counsel asserts that the applicant submitted credible evidence to demonstrate his presence and eligibility. Counsel contends that the director did not afford proper weight to the affidavits submitted, and requests reconsideration of the evidence in the record. No new evidence is submitted in support of the appeal.¹

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.

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 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

¹ On Form I-290B, counsel indicated that it would send a brief and/or additional evidence to the AAO within 30 days. On April 29, 2008, the AAO sent a fax to counsel to inquire whether such evidence had in fact been submitted. In a response received on the same day, counsel indicated that nothing additional had been filed in this matter.

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).

In his service interview on March 8, 2006, the applicant claimed that he first entered the United States in 1980 when he was sixteen years old through San Diego. He claimed to live in Los Angeles for approximately twelve to thirteen years prior to moving to Anaheim. No documentation in support of his claims of residence was submitted.

In support of his presence in the United States during the requisite period, the applicant submitted only one affidavit (contrary to counsel's contention on appeal). The affidavit, dated January 18, 2003 by [REDACTED], claims that the affiant has known the applicant since 1980 when he introduced himself to the affiant as a sales person. Mr. [REDACTED] claims he has seen the applicant many times at family parties. No further information is provided.

In the Notice of Intent to Deny (NOID), dated March 30, 2006, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no additional evidence was received. In the Notice of Decision, dated August 5, 2006, the director denied the instant applicant based on the reasons stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted one affidavit as evidence to support his Form I-485 application. Here, the applicant has failed to meet this burden.

The applicant submitted one affidavit from [REDACTED], who simply states that he has known the applicant since 1980 and that the applicant introduced himself as a sales person. No further information is submitted, and the affiant provides no additional information regarding his relationship with the applicant.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include: 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the

means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v). The affidavit of [REDACTED] simply identifies the applicant by name and provides the means by which the affiant may be contacted. No additional information is provided.

On appeal, counsel asserts that the applicant submitted credible affidavits from “reputable individuals,” and urges the AAO to afford them appropriate weight. The AAO, however, has evaluated the one affidavit on record in accordance with the above standards, and notes that the evidence must be evaluated not by the quantity of evidence alone but by its quality. However, this one document falls short of being probative in this matter, and provides minimal detail pertaining to the applicant’s continuous unlawful residence in the United States since before January 1, 1982 to May 4, 1988. Merely claiming to have known the applicant since 1980 is not sufficient to meet the burden of proof in these proceedings.

The absence of sufficiently detailed documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period 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 upon a document with minimal probative value, and his failure to supplement the record with probative evidence when afforded the opportunity, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

It is noted that on or about June 20, 2004, the Los Angeles Police Department arrested the applicant and charged him with the following:

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|-----------|----------|-------------------------------------------|
| COUNT 01: | 23152(A) | VC MISD – UND INFLNCE ALCHL/DRUG IN VEH. |
| COUNT 02: | 23152(B) | VC MISD - .08% MORE WGHT ALCHL DRIVE VEH. |
| COUNT 03: | 20002(A) | VC MISC - HIT AND RUN/PROPERTY DAMAGE |
| COUNT 04: | 20002(A) | VC MISC - HIT AND RUN/PROPERTY DAMAGE |
| COUNT 05: | 16028(A) | VC MISD – NO PROOF OF CAR INSURANCE |

The record reflects that the applicant pled nolo contendere to Count 02. On July 14, 2004, he was convicted and placed on summary probation for 36 months and ordered to pay a number of fines. (Case [REDACTED]). Counts 01, 03, 04 and 05 were dismissed.

This misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

In conclusion, the applicant has failed to establish continuous unlawful residence from before January 1, 1982 through 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.