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FILE:

MSC 03 247 62150

Office: LOS ANGELES, CALIFORNIA

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IN RE:

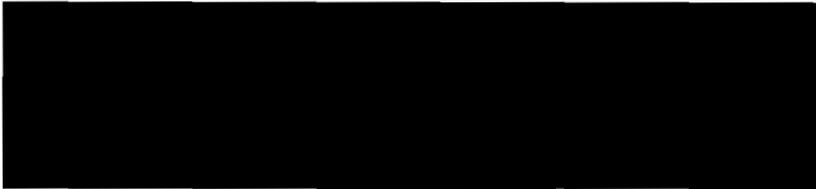
Applicant:



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. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the late legalization provisions of 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 determined that the applicant had not established 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 indicated that the applicant failed to provide sufficient, credible evidence that he was continuously present in the United States during the statutory period beginning on November 6, 1986 and ending on May 4, 1988.

On appeal, counsel asserted that the applicant did maintain continuous unlawful residence and physical presence in the United States during the statutory periods.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

- (i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

*See also* 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

- (1) 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.

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 states 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 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 to either request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

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 absence of contemporaneous evidence is not necessarily fatal to the applicant’s claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

Documentary evidence may be in the format prescribed by CIS regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and “state the employer’s willingness to come forward and give testimony if requested.” *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a “relevant document” under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.<sup>1</sup>

At issue in this proceeding is whether the applicant has submitted credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The record indicates that on or near March 15, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On June 4, 2003, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains documents that relate to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, including:

1. The Form I-687 signed by the applicant under penalty of perjury on March 15, 1990. At item 33 of this form, where the applicant was to list his residences in the United States since his first entry, he stated that from May 1981 through March 1986, he resided at [REDACTED] Danbury, Connecticut; from March 1986 through April 1987, he resided at [REDACTED] Glendale, California; and from May 1987 through May 1988, he resided at [REDACTED] Glendale, California. At item 36, where the applicant was to list his places of employment since his entry into the United States, he stated that from May 1981 through July 1983, he worked at Glendale Nissan; from August 1983 through August 1984, he worked at Glendale News; and from September 1986 through the date that form was signed, he worked for [REDACTED].
2. The employment verification letter dated January 19, 1990 signed by [REDACTED] on letterhead stationery which indicates that his company is located in Montrose, California. The letter also indicates that the applicant began working for [REDACTED] Superacion on February 1, 1987 as a director of administration, and that he continued in this position until the date that letter was signed.<sup>2</sup>
3. The affidavit of [REDACTED] dated January 15, 1990 in which the affiant attested that the applicant is her nephew and that he resided in her house at [REDACTED] Danbury, Connecticut from 1981 through 1986.
4. The affidavit of [REDACTED] of [REDACTED] Danbury, Connecticut, dated May 11, 2003 in which the affiant attested that the applicant is her nephew and that he has lived with her from 1981 through the date that she signed this affidavit, and that she covered all his living expenses during that period.
5. The affidavit of [REDACTED] dated April 11, 2006 in which the affiant attested that the applicant is her nephew and that from 1981 through 1987, he was her responsibility because he was under 18 years of age.
6. A copy of the applicant's marriage certificate which lists November 15, 1965 as his date of birth. This in turn implies that the applicant turned 18 in 1983.

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<sup>2</sup> This document is on letterhead stationery. The information on the letterhead is written in English. The body of the letter is written in Spanish. The applicant did not provide a translation of the document.

7. The affidavit of \_\_\_\_\_ dated January 15, 1990 in which the affiant attested that the applicant is her nephew and that he resided in her house at \_\_\_\_\_ Danbury, Connecticut from 1981 through 1986.
8. The affidavit of \_\_\_\_\_ of \_\_\_\_\_ Danbury, Connecticut, dated May 11, 2003 in which the affiant attested that the applicant is her nephew and that he has lived with her from 1981 through the date that she signed this affidavit, and that she covered all his living expenses during that period.
9. The affidavit of \_\_\_\_\_ dated April 11, 2006 in which the affiant attested that the applicant is her nephew and that from 1981 through 1987, he was her responsibility because he was under 18 years of age.
10. The statement of \_\_\_\_\_ the husband of \_\_\_\_\_ dated April 2, 2006 which indicates that Mr. \_\_\_\_\_ has known the applicant since 1979.
11. A copy of a visa stamp in the applicant's passport which indicates that on May 11, 1988, the applicant received a B1/B2 visa to enter the United States at the U.S. Consulate in Bogota, Colombia. A copy of an entry stamp which indicates that the applicant entered the United States at Miami, Florida on May 27, 1988.
12. The *LULAC* Class Member Declaration on which the applicant attested that on March 15, 1988 he departed the United States for Colombia and re-entered this country on May 27, 1988. Thus, the applicant stated that he was outside the United States during the final fifty days of the statutory period.
13. The Form I-687 which at item 35 indicates that the applicant departed the United States on April 15, 1988 for Colombia and re-entered this country on May 27, 1988.
14. The applicant's affidavit dated March 13, 1990 on which the applicant initially stated that he departed the United States on 4-15-88. He later keyed over that date such that it would read that he departed the United States on 2-15-88. He also attested on this affidavit that he re-entered the United States on May 27, 1987. The applicant then stated that he did not file for legalization prior to May 4, 1988 because he believed that he was ineligible because he exited the United States in 1987 and returned on a nonimmigrant visa.

On August 3, 2006, the director issued a Notice of Intent to Deny (NOID) which indicated that the applicant had failed to demonstrate continuous residence in the United States during the statutory period. In the NOID, the director indicated that discrepancies in the record called into question the applicant's claim that he resided in the United States during the statutory period. For instance, the director pointed out that the applicant stated on the Form I-687 that from May 1981 through March 1986 he lived in Danbury, Connecticut and worked in Glendale, California. Also, the Form I-687 indicates that the applicant worked to cover living expenses while residing in the United States from May 1981 through the end statutory period. However, the affidavits dated May 11, 2003 of his Aunt \_\_\_\_\_ and of his Aunt \_\_\_\_\_ state that these aunts covered all the applicant's living expenses during the statutory period. Further, the applicant stated on the Form I-687

that he first entered the United States during 1981. Yet, [REDACTED] the applicant's aunt's husband, indicated in his statement dated April 2, 2006 that he first met the applicant in 1979.

The director also noted that the applicant had failed to provide any employment verification letters or other evidence to corroborate his claims that he was employed at Glendale Nissan and at Glendale News during the statutory period.

For these reasons, the director intended to deny the application.

On rebuttal, counsel asserted that the applicant traveled between Connecticut and California during 1981 through 1987. To corroborate this assertion, counsel submitted the statement of the applicant's wife, [REDACTED], in which she indicated that the applicant traveled regularly between Connecticut and California during 1981 through 1986, and that he found seasonal work at Glendale Nissan and Glendale News Press during this period. In addition, counsel asserted on rebuttal that the applicant's aunt's husband, [REDACTED] first met the applicant when he was traveling to Colombia in 1979. Finally, counsel stated that the individual who prepared the applicant's Form I-687 and supporting documentation provided inaccurate information on the statement of [REDACTED] and elsewhere without the applicant's knowledge.

On rebuttal, the applicant did not provide any corroborating, contemporaneous evidence or employment letters to establish that he had lived and worked in either California or Connecticut during 1981 through 1986, as the director had indicated were needed in the NOID.

Counsel concluded that the evidence in the record taken as a whole demonstrated that the applicant did reside continuously in the United States and was continuously physically present in this country during the statutory periods.

On October 3, 2006, the director denied the application based on the reasons set out in the NOID.

On appeal, counsel asserted that the applicant did maintain continuous unlawful residence in the United States throughout the statutory period. Counsel asserted that the evidence in the record was consistent in its claims that the applicant had traveled back and forth between Connecticut and California during 1981 through 1986, and its claim that [REDACTED] had met the applicant while traveling to Colombia in 1979. Counsel also stated that the individual who prepared the applicant's Form I-687 and supporting documentation provided inaccurate information on the statement of [REDACTED] and elsewhere without the applicant's knowledge. Counsel indicated that the statement of the applicant's wife dated August 28, 2006 corroborated the claims that the applicant had moved back and forth between California and Connecticut during 1981 through 1986.

The AAO would note the following major inconsistencies in the record. The applicant provided certain statements from his aunts which indicate that he lived in Connecticut during 1981 through 1986. In addition, other statements from his aunts in the record indicate that the applicant lived in Connecticut throughout the statutory period, and that his aunts covered all his living expenses during that time. The applicant also indicated on the Form I-687 that he was employed in California throughout the statutory period, and he earned an annual salary sufficient to support himself during those years.

These discrepancies in the evidence cast serious doubt on the authenticity of all the evidence in the record. This in turn casts doubt on the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States during the statutory period.

The applicant failed to provide any contemporaneous evidence that might be considered independent, objective evidence of his having resided in the United States from a date prior to January 1, 1982 and throughout the statutory period.

The AAO also finds that the various statements in the record which purport to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States in an unlawful status from a date prior to January 1, 1982 through May 4, 1988, and that these documents do not have probative value in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.