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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES Date: NOV 0 4 2008

MSC 02 245 61376

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. 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.

John H. Vaughan
for
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 director in Los Angeles. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the evidence of record establishes the applicant's eligibility for LIFE legalization.

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).

"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." (Emphases added.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." (Emphasis added.) 8 C.F.R. § 245a.16(b).

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 [redacted] who claims to have lived in the United States since 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 2, 2002. As evidence of his residence in the United States during the years 1981-1988, the applicant submitted the following document:

- A letter from [redacted], owner of Ocean Park Enterprises in Santa Monica, California, dated April 14, 2002, stating that the applicant has been a tenant in his apartment located at [redacted] California, since 1980, and that the applicant works part-time for him doing light maintenance such as repairing, plumbing, replacing lights, painting and carpentry.

With a Form I-687, Application for Status as a Temporary Resident, he filed on October 26, 2005, the applicant submitted the following additional documentation as evidence of his residence in the United States during the years 1981-1988:

A letter from [redacted] a resident of Hawthorne, California, dated September 20, 2005, stating that he knew the applicant was the manager of the Ocean Park Enterprises apartment complex located at [redacted]

Avenue, Hawthorne, from 1981 to 1989, and that he moved to the apartment complex in 1989.

- A letter from a resident of Hawthorne, California, dated September 18, 2005, stating that she had known the applicant from 1980 to the present.

  A copy of a Rental Agreement between and the applicant for a month-to-month rental of California, dated February 1, 1980.

The applicant was interviewed for LIFE legalization on May 22, 2006. On September 16, 2006, the director issued a Form I-72, requesting the applicant to submit proof of his continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988, and proof of his continuous physical presence in the United States from January 1, 1982 through May 4, 1988. The director requested that affidavits submitted by the applicant be accompanied by proof of the affiant(s) own identity and residence in the United States during the dates claimed. In response, the applicant submitted the following additional documentation:

- An undated letter from , a resident of Los Angeles, California, stating that he had known the applicant for over 25 years, and that the applicant has been residing at Hawthorne, California, since 1980.

- A letter from , a resident of Paramount, California, dated October 2, 2006, stating that he met the applicant in July 1982 when the applicant was cutting a neighbor's lawn, that they started talking to each other, that he sees the applicant about every two weeks, and that they have remained friends up to the present.

In a Notice of Intent to Deny (NOID), dated February 20, 2007, the director cited inconsistencies between the applicant's testimony at his LIFE legalization interview and other documentation in the record. The director indicated that the inconsistencies cast doubt to the veracity of the applicant's claim that he entered the United States in 1980 and resided continuously in the country from then onwards. The applicant was granted 30 days to submit an explanation for the discrepancies or rebut any adverse information.

The applicant failed to submit a rebuttal or additional evidence in support of his claim and on May 8, 2007, the director denied the application for the reasons cited in the NOID.

On appeal, counsel offered some explanations for the evidentiary discrepancies cited in the NOID. Counsel did not submit any additional documentation with the appeal.

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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The rental agreement contains no stamp of a notary public or other official mark to verify that it was actually signed on the date indicated: February 1, 1980. The AAO also notes that the date of the agreement is prior to any of the dates the applicant claims to have entered the United States that year – the earliest of which was February 2, 1981. Nor was the rental agreement accompanied by any rental receipts or other official documents to establish that the applicant did reside at the address during the years indicated. For all of these reasons, the rental agreement is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The letters from [redacted] all have minimalist formats with little input by the affiants. The information in the letters is superficial, and could just as easily have been provided by the applicant. The authors provided almost no information about the applicant's life in the United States and their interaction with him over the years. Nor are the letters accompanied by any documentary evidence from the authors – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. Finally, all the authors assert that the applicant resided at one address [redacted] California – from 1980 up to 2007, but the applicant on the Form I-687 prepared in 1990 listed his address at that time as [redacted] and on a Form I-695, Application for Replacement of Form I-688A, dated September 17, 1990, the applicant listed his address as [redacted] Los Angeles, California.

In view of their substantive shortcomings, and the inconsistencies noted above, the AAO finds that the foregoing letters have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

As for the letters from [redacted] they too have little probative value as evidence of the applicant's residence in the United States during the period required for

adjustment under the LIFE Act. The authors provided almost no information about the applicant's life in the United States, where he lived and worked, and their interaction with him over the years. Nor are the letters accompanied by any documentary evidence from the authors – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the letters are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for 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.