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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: SAN FRANCISCO Date: NOV 12 2008
MSC 02 137 63232

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. 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.

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

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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel argues that the conflict in dates which the applicant claimed to have resided at his residences and the affiant's affidavit is minor and not a legitimate basis to find the applicant's claim not credible. Counsel provided copies of documents that were previously submitted.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(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 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 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. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant only provided the following:

- A notarized affidavit from [REDACTED] (last name indecipherable) who attested to the applicant's departure from the United States to Mexico from July 20, 1987 to August 17, 1987.
- A notarized affidavit from [REDACTED] of San Francisco, California, who indicated that he has been residing in the United States since 1986 and has known the applicant since they were 13 years of age in Mexico.
- A statement dated June 23, 2001, from [REDACTED] of Reseda, California, who attested to the applicant's residences at [REDACTED], Encino, California from October 1981 to October 1986, and at [REDACTED] Reseda, California from October 1986 to February 1991. The affiant asserted that he was privileged to be a friend of the applicant all these years.

At the time of his interview on January 15, 2004, the applicant was issued a notice, which requested the applicant to list all his absences from the United States since November 6, 1986, and to provide evidence to establish his residence and presence during the requisite period and his entry into the United States prior to January 1, 1982. The applicant was also requested to submit a Form I-693, Medical Examination of Aliens Seeking Adjustment of Status. The applicant was given 90 days in which to submit the requested documents.

Counsel, in response, only submitted the Form I-693 and a declaration from the applicant listing his entries and absences from the United States. Along with his response, counsel submitted a letter dated March 16, 2004, asserting that the applicant "continues to attempt to locate persons with whom he lived and worked with during his first years in the United States. Please leave the evidentiary record open for the receipt of additional evidence until the 90 day period from the date of the notice of intent to deny expires."

On May 18, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavit from [REDACTED] lacked probative value as the affiant failed to state how he had knowledge of the applicant's residences, the length of time he had known the applicant and how often he had seen the applicant during the requisite period. The applicant advised that [REDACTED]'s attestation regarding the dates of his residences did not coincide with the dates listed by the applicant on his Form I-687 application signed May 18, 1990. The applicant was further advised of his failure to submit *all* the requested documents outlined in the notice of January 15, 2004.

The notice was sent to the applicant and to counsel at their addresses of record. The notice sent to the applicant was returned by the post office as undeliverable, and according to a domestic return receipt contained in the file, the notice to counsel was received and signed for on May 20, 2004.

The director, in denying the application, noted that "this office has not received further evidence or a response of any kind" to the notice of May 18, 2004 and that [REDACTED]'s affidavit had little evidentiary weight as it contradicted the applicant's claim of residence on his Form I-687 application.

On appeal, counsel asserts, in pertinent part:

The district director contends that the USCIS did not "a response of any kind" to a notice of intent to deny. The district director is wrong. Attached is a copy of the cover letter to an evidentiary response received by the district director on March 16, 2004. The evidence suggests that the district director rendered his decision without considering all evidence offered by appellant in support of his application.

Counsel's assertion has no merit as the director was clearly referring to the Notice of Intent to Deny that was issued two months *after* the receipt of counsel's letter of March 16, 2004. The director waited over 90 days

before issuing the notice of May 18, 2004 and over a year before rendering his decision. As previously noted counsel only submitted the applicant's declaration and the Form I-693 in response to the notice of January 15, 2004.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. See *Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by counsel have been considered. However, the AAO does not view the two affidavits discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988.

The applicant claimed on his Form I-687 application that he was self-employed as a laborer during the requisite period. However, the applicant provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i).

As [REDACTED] has only been residing in the United States since 1986, his affidavit cannot serve as evidence of the applicant's residence in the United States prior to 1986. Furthermore, the affiant makes no attestation to the applicant's residence in the United States until 1992.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the inconsistencies outlined by the director. However, no statement has been submitted by [REDACTED] to resolve the contradicting affidavit. In addition, the affiant failed to provide any details regarding the nature of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence. As such, it is determined that the affidavit from [REDACTED] is not plausible, credible, and consistent both internally and with the other evidence of record.

The remaining affidavits have no evidentiary weight as they only serve to attest to the applicant's residence in the United States *subsequent* to the period in question.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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).

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously from before January 1, 1982, through May 4, 1988, as required under 1104(c)(2)(B)(i) of the

LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.