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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: NOV 28 2008
MSC 02 225 60389

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
John F. Grissom, Acting 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, California. 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 the applicant asserts that he has submitted sufficient documentation to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

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."

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 applicant, a native of Mexico who claims to have lived in the United States since January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 13, 2002. At that time the record included the following evidence of the applicant's residence in the United States from 1981 up to May 4, 1988, all of which had been submitted with a Form I-687 (application for status as a temporary resident) filed in 1990:

Three letters of employment from [redacted] president/owner of Pacific Environmental Landscape Inc. in Orange, California, dated April 9, 1990 and April 20, 1990, stating that the applicant was employed as a landscape maintenance laborer. The letter dated April 4, 1990 stated that the applicant had been employed continuously from October 20, 1981. One of the letters dated April 20, 1990, stated that the applicant had been employed continuously from October 20, 1983, and the other letter dated April 20, 1990, stated that the applicant had been employed continuously from October 20, 1987.

- An affidavit from [redacted], a resident of Santa Ana, California, dated May 22, 1990, stating that he worked together with the applicant from 1982 to 1988, that they resided at the same address ([redacted] and that he drove the applicant to the airport on May 3, 1987, when the applicant went to Mexico, and picked him up from the airport when he returned to the United States on May 27, 1987.

- A photocopy of an envelope addressed to the applicant at [redacted] Anaheim, California, from an individual in Mexico. The postmark date on the envelope is illegible.

At his LIFE legalization interview on May 15, 2006, the applicant submitted another affidavit from [redacted] dated May 12, 2006, reiterating that he worked together with the applicant from 1982 to 1988 at Pacific Environmental Landscape Inc.

In a Notice of Intent to Deny (NOID), dated June 13, 2007, the director advised the applicant that the letters of employment he submitted in support of his claim were internally inconsistent and impacted his credibility. The director noted that the applicant had not submitted sufficient

evidence to establish his eligibility for LIFE legalization. The applicant was granted 30 days to submit explanations for the evidentiary discrepancies or rebut any adverse information.

In response, the applicant submitted a personal statement as well as the following additional documentation as evidence of his residence in the United States during the years 1981-1988:

- An affidavit from (residence unstated), dated July 9, 2007, stating that he had knowledge that the applicant entered the United States in or before September 1981 because when he met the applicant around February 1982 the applicant told him that he entered the United States in or about September 1981. stated that the applicant used to do gardening work for the apartment complex where he lived in Santa Ana, California, and that they became friends and often socialized together.

- An affidavit from esidence unstated), dated July 10, 2007, stating that he and the applicant, his cousin, worked together from January 1, 1982 through November 31[sic], 1988, at Pacific Environmental Landscape Company, and lived together at California.

On July 31, 2007, the director issued a decision denying the application. The director indicated that the evidence submitted in response to the NOID was insufficient to overcome the grounds for denial.

On appeal the applicant asserts that he has submitted sufficient documentation to establish that he entered the United States before January 1, 1982 and resided continuously in the country through 1988.

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 letters of employment from , dated April 9 and 20, 1990, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not identify the applicant's address at the time of employment, do not indicate whether the information about the

applicant's employment was taken from the company records, and do not indicate whether such records are available for review. The letters were not supplemented by earnings statements, pay stubs, tax records or other documentation demonstrating that the applicant was employed during any of the years claimed. In addition, the letters are internally inconsistent. Although the letters were signed by the same employer, they all indicated different periods of employment. The inconsistencies in the dates of employment cast doubt on the veracity of the applicant's claim that he was employed by Pacific Environmental Landscape Inc. for any of the years claimed between 1981 and 1990. Although the director notified the applicant of the discrepancies in his NOID dated June 13, 2007, and offered him the opportunity to reconcile the discrepancies, the applicant failed to do so. 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). For the reasons discussed above, the AAO determines that the employment letters are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits by have minimalist or fill-in-the-blank formats with little personal input by the affiants. While they claim to have resided with, worked with, or otherwise known the applicant during the 1980s, the affiants provided very few details about the applicant's life in the United States and his interaction with them over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationship with the applicant in the United States during the 1980s. While claimed in his affidavit of May 22, 1990 to reside with the applicant at , which is the address the applicant claimed in his Form I-687 from 1981 to 1990, identified the applicant's address in his letters of April 9 and 20, 1990, as in Santa Ana. The applicant has not explained this inconsistent information. In view of their substantive shortcomings, and the contradiction noted, the AAO finds that the affidavits 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 photocopy of the envelope addressed to the applicant at California, it has no probative value as evidence of the applicant's residence in the United States during the requisite period for LIFE legalization because the postmark is illegible.

Based on the foregoing analysis of the evidence, the AAO determines 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. 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.