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FILE:

MSC 03 043 60846

Office: LOS ANGELES

Date: **SEP 02 2008**

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:

SELF-REPRESENTED

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. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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

On appeal, the applicant submits a brief statement and resubmits photocopies of documentation previously provided.

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, and 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).

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of

continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on November 12, 2002. On March 5, 2007, the district director denied the application. The applicant filed a timely appeal from that decision on March 29, 2007.

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 from before January 1, 1982 through May 4, 1988.

The record reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

#### Employment letters

- A letter, dated November 4, 2002, from [REDACTED] owner of [REDACTED] Beauty Salon, Compton, California, stating that the applicant worked for him from November 1981 to January 1986, in maintenance, for which he was paid in cash. A business card from the salon, showing [REDACTED]
- An undated fill-in-the-blank "verification of employment" from [REDACTED] who identifies himself as the plant manager of Los Angeles Piece Dye Works, Los Angeles, California, stating the applicant was employed as a maintenance worker from March 15, 1982, to September 30, 1985.

Neither of the employment letters provided are notarized and they do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; 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. Neither of the letters are on company letterhead stationery and photocopy of business cards relating to the companies do not show either Mr. [REDACTED] or [REDACTED]'s names.

Furthermore, on a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), submitted in or about February 1992, the applicant did not indicate that he had ever worked for Los Angeles Piece Dye Works. He also indicated that he had worked for [REDACTED] Beauty Salon from 1981 to 1986 – not to September 1985, as stated by [REDACTED] in his letter.

#### Affidavits from acquaintances

- An “affidavit of acquaintance regarding physical presence of applicant,” dated July 18, 1990, from [REDACTED] of Venice, California, stating that he had been acquainted with the applicant since 1981 – that the applicant had been, and continues to be, his customer.
- Two similar pre-printed fill-in-the-blank affidavits, notarized on November 4, 2002, from [REDACTED] and [REDACTED] of Compton, California. [REDACTED] states that she had known the applicant since 1980 after meeting him at a family gathering and that she had been in touch with him since. [REDACTED] states that he had known the applicant since 1982 after meeting him at a friend’s house.

The affiants listed above did not provide identifying documentation and/or evidence of their residences in the United States at the time the statements were made. They did not state in any detail how they first met the applicant in the United States, or how frequently and under what circumstances they saw the applicant during the requisite period. The affiants have provided little information for concluding that they had direct and personal knowledge of the events and circumstances of the applicant’s residence in the United States. As such, these affidavits can only be afforded minimal weight as evidence of the applicant’s residence and presence in the United States throughout the requisite period.

#### Other documentation

- A photocopy of one page from a bank book showing transactions dating from July 3, 1982, to June 13, 1983.

Although the applicant’s name and an account number are shown at the top, photocopies of the full book have not been provided, specifically including the cover page, or any other documentation confirming that the date the applicant opened the account. Furthermore, while the name of the bank appears to be “Phoenix,” there is no complete name and address for the bank on the document provided. Therefore, the document provides little probative value. It is also noted that the typing of the applicant’s name appears to be different from the typing of the

account number. Because the document is incomplete, is not an original document, does not provide the name and address of the bank, and is not corroborated by other documentation (including for example documentation from the bank indicating the date the account was opened, the applicant's address, etc.) it cannot be determined that it is, in fact, genuine and relates to the applicant.

- A photocopy of a receipt for registered mail, sent by the applicant to Mexico, stamped July 20, 1984.
- A photocopy of an earnings statement, dated December 16, 1986.
- A photocopy of an envelope mailed to the applicant from Mexico, postmarked October 1987.
- A photocopy of a receipt for \$50.00, dated April 20, 1988, referencing the applicant, issued by the office of [REDACTED] of Hawthorne, California.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” *Black’s Law Dictionary* 1064 (5<sup>th</sup> ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Based on the documentation, noted above, the applicant has established his presence in the United States in or after July 1984. However, it is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

It is noted that, beyond the decision of the district director, the applicant failed to submit proof of his identity pursuant to 8 C.F.R. §245a.2(d)(1).

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