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FILE: [REDACTED]  
MSC 02 243 60263

Office: LOS ANGELES

Date: **SEP 02 2008**

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. 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, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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

On appeal, the applicant states that inconsistencies between his testimony and submitted documentation were due to the length of time that has elapsed since the events in question occurred.

An applicant for permanent resident status under section 1104 of the LIFE Act (Life Legalization applicant) must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States, and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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.* at 80. 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

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.

On May 31, 2002, the applicant submitted a Form I-485, Application to Register Permanent Resident or Adjust Status.

The applicant was subsequently interviewed in connection with his application. The director sent the applicant a Notice of Intent to Deny (NOID) on September 9, 2006, noting inconsistencies in his testimony and documentary evidence, and providing the applicant thirty days to respond.

On October 12, 2006, the director concluded that the applicant had not responded and denied the application for the reason set out in the NOID.

On appeal the applicant asserts he timely submitted his response to the NOID and asks CIS to reconsider his application.

In reviewing the record it appears the applicant's response to the director's NOID was timely filed, and will be accepted for consideration on appeal.

Evidence contained in the record which is relevant to the required period includes:

- (1) Letter, dated March 9, 2002, signed by [REDACTED] asserting the applicant picked strawberries for him in 1986.
- (2) Document, signed in May 2002 by [REDACTED] asserting that he has known the applicant as a member of his church since 1985.

The remaining evidence is for periods subsequent to 1986. The applicant has also submitted tax returns and photo IDs.

The evidence submitted by the applicant does not cover the required period. In addition, the evidence submitted is not sufficiently probative to establish the applicant's assertions of arrival and continuous residence in the United States during the required period. The applicant asserted during an interview that he resided in Santa Maria, but later indicates he lived primarily in Los Angeles, California. The interviewer noted that the applicant's verbal testimony contradicted information listed on the Applicant's I-485, and recommended against approval due to lack of credibility.

The AAO would also note that the applicant listed only one absence on his I-687, in October of 1987, to attend his sick brother, and yet indicates that he has four children, each born in Mexico during the years 1982, 1983, 1987 and 1990. Tax forms submitted by the applicant claim these children as dependents residing with the applicant, while all other documentation submitted to the INS state they were born and resided in Mexico. These and other inconsistencies are fatal to the applicant's credibility. Anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity

to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

As stated in 8 C.F.R. § 245.15(b)(1), a list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3). The evidence that has been submitted by the applicant is inconsistent with his testimony, is not sufficiently probative to shed light on the facts surrounding his arrival and residence in the United States, and lacks credibility. The applicant has failed to establish a continuous unlawful residence during the required period. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act and the appeal will be dismissed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for LIFE Act legalization has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 245a of the Act. The applicant has failed to meet this burden.

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