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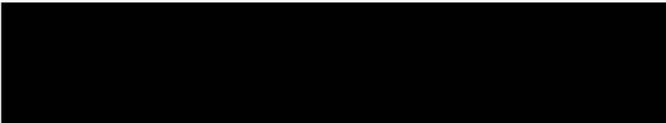
consolidated herein]  
MSC 03 161 60936

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:



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.

  
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 (director) in New York City. 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 director failed to properly consider the evidence submitted by the applicant to establish his continuous unlawful residence in the United States. Counsel asserts that the director's finding that the applicant willingly submitted fraudulent documents was not supported by the facts and evidence in the record.

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 Colombia who claims to have lived in the United States since August 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on March 10, 2003. On April 30, 2004, he was interviewed at the New York District Office. As evidence of his residence in the United States during the years 1981-1988 the applicant submitted a series of letters, affidavits and other documents, some of which had originally been filed in 1990. They included the following:

- A letter from [REDACTED] the supervisor of Brite Metal Industries Corporation in Brooklyn, New York, dated May 3, 1989, stating that the applicant was employed as a painter since September 1981 at an annual salary of \$17,700.00
- A letter from [REDACTED] the plant manager of Empire Lighting & Gift Company, Inc. in Brooklyn, New York, dated May 22, 1989, stating that a “[REDACTED]” was employed by the company since November 1987 at an hourly rate of \$6.00.

Medical records from St. Luke's Roosevelt Hospital Center and the Central Park Medical Unit in New York City, showing that "[REDACTED]" was treated for an ankle injury on January 31, 1988.

A medical record printout from Lutheran Medical Center in Brooklyn, New York, dated March 20, 2001, indicating that "[REDACTED]" was treated at the medical center on April 5, 1988.

- An affidavit from [REDACTED], a resident of Brooklyn, New York, dated May 30, 1989, stating that he met the applicant in 1984 in Manhattan and that he knows that the applicant resided in Brooklyn, New York from December 1984.
- An affidavit from [REDACTED], a resident of Brooklyn, dated May 23, 1989, stating that he rented a room to the applicant at [REDACTED] Brooklyn, New York, from September 1981 to April 1987.
- An affidavit from [REDACTED] a resident of Brooklyn, dated May 23, 1989, stating that she rented a room to the applicant at [REDACTED] Brooklyn, New York, from April 1987 to the present (1989).
- An affidavit from [REDACTED] a resident of New York City, dated May 29, 1989, stating that the applicant has been his friend for a long time, that he met the applicant at a party, and that he knows the applicant has resided in New York City from November 1981 to the present (5/29/89).

An affidavit from [REDACTED], a resident of New York City, dated May 29, 1989, stating that he met the applicant in 1981, and that the applicant used to rent videos from his shop.

- An affidavit from [REDACTED] a resident of Brooklyn, New York, dated May 31, 1989, stating that she met the applicant in 1982.

An affidavit from [REDACTED], a resident of Brooklyn, New York, dated May 31, 1989, stating that she met the applicant at a birthday party, that she knows that the applicant resided in Brooklyn, New York from November 1981 to the present (1989), and that she has not gone for more than three days without seeing the applicant.

- Another affidavit from [REDACTED] dated April 8, 2004, stating that the applicant was employed by Brite Metal Industries Corp. as a painter from November 1981 until the plant closed on July 22, 1990, that he was the applicant's supervisor, and that the applicant was known as [REDACTED] at that time.

- Another affidavit from [REDACTED] dated April 6, 2004, stating that he first met the applicant in Manhattan while he was shopping in 1984, that he was introduced by the applicant's sister and that he continues to see the applicant occasionally at parties or at his sister's home.

Another affidavit from [REDACTED] dated April 7, 2004, stating that the applicant used to rent a room from her at [REDACTED], Brooklyn, New York, from April 1987 to December 1989, and that the applicant was known as [REDACTED] at that time.

- A letter from R [REDACTED] C.Ss.R, the pastor at Basilica of Our Lady of Perpetual Help in Brooklyn, New York, dated March 29, 2004, stating that according to their records, the applicant studied English at an ESL course offered at the church in 1985 and 1986.
- Copies of letter envelopes all with postmark dates from Pereira, Colombia dating from 1981 to 1989, addressed to the applicant at [REDACTED], Brooklyn, New York, and at [REDACTED] Brooklyn, New York

In a Notice of Intent to Deny (NOID), dated September 30, 2005, the director indicated that the applicant had not provided sufficient credible evidence to establish that he resided continuously in the United States from before January 1, 1982, through May 4, 1988. The director acknowledged that the record from Lutheran Medical Center is credible evidence of the applicant's presence in the United States as of April 1988, and discounted the other affidavits as non-credible evidence of the applicant's residence in the United States in the 1980s.

The director cited to an inconsistency between the applicant's testimony at his LIFE interview on April 30, 2004, regarding his trip to Colombia in 1987 and information provided by the applicant on the Form for Determination of Class membership in *CSS v Meese*, dated May 31, 1989. Specifically, the director noted that while the applicant testified that he traveled to Colombia and back in 1987 by crossing the border, he stated on the form that he traveled to Colombia and back by airplane and was not inspected upon his arrival. The director also noted that the affidavits and letters of employment submitted by the applicant could not be verified and are not credible evidence of the applicant's continuous residence in the United States. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, the applicant submitted additional documents with attachments. They include the following:

- An affidavit from [REDACTED], a resident of New York City, dated October 21, 2005, stating that she is the applicant's grandmother, that she knows that the applicant was in the United States as of January 1, 1982, that she has been in

continuous contact with the applicant, and knows that the applicant has resided continuously in the United States since 1981, except for a period of less than 30 days in 1987, when he went back to Colombia and then returned to the United States. Ms. [REDACTED] attached a photograph that she indicated was a picture of herself, her son, and the applicant taken on December 31, 1982, at her daughter's house.

- An affidavit from [REDACTED], a resident of Jackson Heights, New York, dated October 21, 2005, stating that she met the applicant in 1986 when she started to work for the Brite Metal factory, that the applicant was already an employee of the company when she got there, and that she has been in frequent contact with the applicant since their first encounter in 1986. [REDACTED] attached three photographs taken with the applicant and other co-workers, one of which she noted was taken at the Brite Metal factory.

An undated letter from [REDACTED], a resident of Brooklyn, stating that in 1987 she and the applicant were co-workers, that she was the office clerk at Brite Metal Industries Corporation and Empire Lighting & Gift Company, Inc., that she prepared the applicant's letter of employment from Brite Metal Industries Corporation, dated May 31, 1989, at the direction of [REDACTED] certifying that the applicant was employed as a painter, and that the applicant was paid in cash. [REDACTED] attached a printout of her earnings statements from the local Social Security Administration as evidence of her employment with Empire Lighting & Gift Company for the years 1987 through 1989.

- A supplemental affidavit from [REDACTED], dated October 21, 2005, indicating that he would be available to testify on the applicant's behalf, and providing his telephone number and identification card.
- A supplemental affidavit from [REDACTED] dated October 21, 2005, submitting bills from [REDACTED] and New York Telephone, as evidence of her residence at [REDACTED] when the applicant resided with her in the years 1987 to 1989, and three photographs of the applicant with the affiant and other people.
- An affidavit from [REDACTED] of Jackson Heights, New York, dated October 25, 2005, stating that he was the director of Latin Center for Immigrants' Rights, which assisted the applicant in preparing his application for LIFE legalization, that he was not aware of the mistake made by his secretary relating to the applicant's departure and re-entry into the United States in 1987, and that the mistake was made by the secretary who was later fired because of her numerous mistakes in preparing clients' applications. [REDACTED] further stated that he had known the applicant for about 18 years at the time of this affidavit (2005), that they have shared many a good time while discussing politics and issues from back home.

- One Polaroid picture of the applicant with a notation on the picture “applicant at Brite Metal.”

On March 23, 2006, the director issued a Notice of Decision denying the application. The director found that the applicant’s rebuttal and the documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. The director noted that only one of the affidavits submitted attested to the applicant’s presence in the United States prior to January 1, 1982, that none of the photographs could be shown to date before 1988, that the utility bills were not in the applicant’s name and thus had no bearing on the case, and that the affidavits of [REDACTED] and [REDACTED] were further discredited because the two affiants were not present in the United States and could not have attested to the applicant’s presence during the period they attested. The director further noted that the two affidavits by the affiants are fraudulent and that the applicant willingly submitted the fraudulent affidavits in an attempt to obtain a benefit. The director concluded that the evidence of record failed to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, counsel asserts that the director failed to properly evaluate the evidence submitted by the applicant in support of his claim, and that the director’s decision is not supported by the facts and evidence in the record. Counsel submitted additional documentations which includes the following:

- A supplemental affidavit from [REDACTED] dated April 7, 2006, attesting that he entered the United States in September 1984, to which a certified copy of his marriage registration was attached indicating that he was married in New York on May 23, 1985.
- A supplemental affidavit from [REDACTED], dated April 7, 2006, stating that she entered the United States illegally in July 1986, and was employed by Empire Lighting and Gift Company Inc. She attached a copy of her marriage certificate indicating that she was married in New York on March 18, 1988, and two letters of employment from Empire Lighting & Gift Company Inc., stating that she had been employed since October 22, 1986.

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 employment letters from the supervisor of Brite Metal Industries, Corporation, dated May 3, 1989, and from the plant manager of Empire Lighting & Gift Company, Inc., do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not provide the applicant's address at the time of employment, do not indicate whether the information was taken from company records, and do not indicate whether such records are available for review. Nor were the letters supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant actually worked for the companies during any of the years claimed. In addition, neither the applicant nor [REDACTED] of Empire Lighting & Gift Company, submitted any document to establish that [REDACTED] and the applicant are one in the same person. The applicant did not claim "[REDACTED]" as an alias on any of his application forms.

For the reasons discussed above, the AAO determines that the employment letters have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 through 1988.

The affidavits from [REDACTED], and from [REDACTED], stating that they have known the applicant since the 1980s, provide few details about the applicant's life in the United States and his interaction with the affiants over the years. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States from January 1, 1982 to May 4, 1988.

Six of the twelve affiants do not claim to have known the applicant as early as January 1, 1982 and beforehand. The photograph submitted by [REDACTED] which she claims was taken on December 31, 1982, has no date stamp or other indication on the photograph confirming that date.

In view of these substantive shortcomings, 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 supplemental affidavits submitted by [REDACTED] and [REDACTED] dated April 7, 2006, while the affiants submitted independent evidence of their presence in the United States before 1987 and 1990 respectively, they do not claim to have known the applicant before 1984 and 1987, respectively. Therefore the affidavits are of little probative value as evidence of

the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letter from the pastor of Basilica of Our Lady of Perpetual Help is of little probative value as evidence of the applicant's residence in the United States during the statutory period because only attested to the applicant studying in 1985 and 1986, and do not claim to have known of the applicant prior to 1985.

The copies of the letter envelopes addressed to the applicant at [REDACTED], Brooklyn, New York, and at [REDACTED], Brooklyn New York, from individuals in Colombia, are of no probative value as evidence of the applicant's continuous residence in the United States in the 1980s because none of the envelopes have postage stamps on them, and there is no indication that the envelopes were mailed to the applicant on the dates indicated by the postmarks.

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.