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U.S. Citizenship
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Services

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22

[Redacted]

FILE:

[Redacted]

MSC 02 214 60255

Office: DALLAS

Date:

SEP 03 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:

[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.

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 Dallas, Texas. 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 did not give proper weight to the evidence submitted by the applicant in support of his claim. Counsel asserts that this evidence is sufficient to establish the applicant's continuous unlawful residence in the United States from 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.” (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 Mexico who claims to have lived in the United States since September 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 2, 2002. At that time the record included the following evidence of the applicant’s residence in the United States during the years 1981-1988, all of which had been filed in 1990:

- A letter from [REDACTED] of Fort Worth, Texas, dated July 29, 1990, stating that he is the manager of [REDACTED] Trucking in Fort Worth, that the applicant was employed as a yard laborer from November 1981 to October 1985, with duties described as “in fill dirt, sand, gravel, and top soil” at a salary of \$4.00 per hour, and that he worked 30 to 40 hours per week.
- A letter from [REDACTED], the pastor of Our Lady of Guadalupe Catholic Church in Fort Worth, Texas, dated August 6, 1990, stating that he was informed by a [REDACTED] that the applicant had been coming to the church since 1981. [REDACTED] attested that he did not know the applicant because he was new to the church.

- An affidavit from [REDACTED], a resident of Azle, Texas, dated August 10, 1990, stating that the applicant resided with him at his house located at [REDACTED] Azle, Texas from September 1981 to August 1984.

An affidavit from [REDACTED], a resident of Fort Worth, Texas, dated August 10, 1990, stating that the applicant resided with him at his house located at [REDACTED], Fort Worth, Texas from August 1984 to January 1987, and at [REDACTED], Fort Worth, Texas, from January 1987 to the present (August 1990).

An affidavit from [REDACTED], a resident of Fort Worth, Texas, dated August 10, 1990, stating that he had personal knowledge that the applicant had resided in the United States from November 1981 to October 1985. Mr. [REDACTED] further attested that he knew that the applicant had worked for [REDACTED] Construction in “fill dirt, sand and gravel” from November 1981 until October 1985.

- An affidavit from [REDACTED] a resident of Bedford, Texas, dated August 10, 1990, stating that he had personal knowledge that the applicant resided in the United States from October 1985 to September 1988, and worked for “Lees Restaurant Dynasty” during that time.
- An affidavit from [REDACTED], a resident of Fort Worth, Texas, dated August 10, 1990, stating that she had personal knowledge that the applicant resided in the United States from November 1981 to the present (August 1990), and that they are close friends.

On June 13, 2003, following his interview for LIFE Legalization on March 27, 2003, the applicant submitted the following additional evidence of his residence in the United States for the years 1981-1988:

- A letter from [REDACTED], pastor of Our Lady of Guadalupe Catholic Church in Fort Worth, Texas, dated April 13, 2003, stating that the applicant has been a parishioner from before January 1982 till 2003, and that he regularly attended religious services.

Affidavits from [REDACTED], a resident of Garland, Texas, from [REDACTED] a resident of Dallas, Texas, from [REDACTED] a resident of Fort Worth, Texas, dated May 31, 2003, from [REDACTED] and from [REDACTED], residents of Fort Worth, Texas, dated June 2, 2003, and from [REDACTED] a resident of Hurst, Texas, dated June 6, 2003, all stating that they have known the applicant since the fall of 1981 and that they have been friends with the applicant over the years.

On August 21, 2003, the director issued a Notice of Intent to Deny (NOID), indicating that the applicant failed to submit sufficient credible evidence of his continuous unlawful residence in the United States. Specifically, the director noted inconsistent information in the two church letters of 1990 and 2003 and that the State of Texas tax records do not reflect [REDACTED] Trucking as being on the tax roster. The director concluded that the evidence of record was insufficient to establish that the applicant resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

On December 10, 2003, the director denied the application for failure of the applicant to establish his continuous residence in the United States during the requisite period for LIFE Legalization.

The applicant filed a timely appeal, and resubmitted copies of some documents already in the record. A supplemental brief from counsel was later submitted asserting that the director did not give proper weight to the evidence submitted by the applicant in support of his claim. Counsel submitted the following additional documentation:

- A letter from [REDACTED], pastor at Our Lady of Guadalupe in Fort Worth, Texas, dated October 11, 2006, stating that the applicant has been a parishioner since 1981, and that he has been coming regularly to the church for religious services.

An affidavit from [REDACTED] a resident of Fort Worth, Texas, dated October 12, 2006, stating that he has known the applicant since 1981, that he knows the applicant has lived in Fort Worth since then, that they visit each other regularly, attend social events together, and that they are members of the same church.

- An affidavit from [REDACTED], a resident of Fort Worth, Texas, dated October 12, 2006, stating that he has known the applicant since 1981, that he met the applicant through friends, that they attend the same church and have social contact frequently.

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 from the manager of [redacted] Trucking do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. In addition, the letters were not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed by the company during any of the years claimed.

For the reasons discussed above, the AAO determines that the employment letters have little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letters from Our Lady of Guadalupe Catholic Church, signed by [redacted] on August 6, 1990, by [redacted] on April 13, 2003 and by [redacted] on October 11, 2006, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letters do not state where the applicant lived at any point in time between 1981 and 1988. The letters do not indicate how and when the church officials met the applicant, and whether the information about his attending services since 1981 was based on the officials' personal knowledge, church records, or hearsay. Since the letters listed above do not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value. The 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 [redacted] and [redacted], dated August 10, 1990, provide some basic information about the applicant, such as the addresses he claims in the United States during the 1980s, but few details about the applicant's life in the United States and his interaction with the affiants during the years they supposedly lived together and socialized together. The information in the affidavits is not very personal in nature, and could just as easily have been provided by the applicant. 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 during the 1980s. 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.

The affidavits from [REDACTED] and [REDACTED] all claiming to have known the applicant since 1981, have minimalist or fill-in-the-blank formats with little personal input by the affiants. The affiants provide very little information about the applicant's life in the United States and their interaction with him 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 during the 1980s. Mr. [REDACTED] only claims to have known the applicant since 1985. 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.

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.