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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 245 60059

Office: LOS ANGELES

Date: **SEP 26 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:



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: On May 25, 2006, the District Director, Los Angeles, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish that he was in the United States prior to January 1, 1982.

On appeal, counsel for the applicant asserts that the applicant did submit affidavits and other documentation sufficient to establish his continuous residence from January 1982 through the statutory period. Counsel asserts that the applicant was not scared, sweating, hesitant, or evasive during his interview and that his testimony should be taken as true. Counsel asserts that all of the documentation the applicant submitted is verifiable. Counsel asserts that the applicant has been in the United States for over 26 years and would suffer extreme hardship if he had to return home.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 and 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 this section. 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.* 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 or 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 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.12(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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," filed on March 14, 1990.

On June 2, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On February 15, 2007, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden, establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The applicant has provided the following evidence relating to the requisite period:

Letters and affidavits

- A letter notarized on May 24, 2002, from [REDACTED] asserts that she is personally willing to verify this information, but does not provide a telephone number. She asserts that she knows that the applicant and [REDACTED] lived at [REDACTED] in San Francisco from July 1981 to December 1986 because she used to visit them. This information is consistent with the information provided by the applicant on his Form I-485. He did not list

any addresses on his Form I-687. Although [REDACTED] states that the applicant is a very close family friend and that sometimes she stayed with him and his girlfriend for more than a week, she does not indicate how, when, or under what circumstances she met the applicant and she does not explain how she remembers it was from July 1981 to December 1986 that she knows that the applicant lived at the address on Mission Street. [REDACTED] does not indicate that she has any personal knowledge of the applicant's entry into the United States and offers few details of the circumstances of his residence other than his address and the fact that he worked in landscaping. She states that she used to visit the applicant and his girlfriend but does not indicate the frequency of the visits. Lacking such relevant detail, the letter can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period;

- A letter notarized on May 24, 2002, from [REDACTED] She asserts that the applicant would do landscaping in and around San Francisco. She asserts that **they are still friends and see each other quite often.** While [REDACTED] asserts that the applicant was her boyfriend and that they lived together at 3503 Mission Street in San Francisco from July 1981 to December 1986, she does not explain when, where, or under what circumstances she met the applicant. Again, the address is consistent with the address and dates provided by the applicant on his Form I-485, however, [REDACTED] does not explain how she recalls that it was July 1981 when she began living with the applicant on Mission Street. Like Ms. [REDACTED] fails to indicate any knowledge of the applicant's travel to or entry into the United States. Although [REDACTED] asserts that she lived with the applicant for more than five years as his girlfriend, she offers few details of the circumstances of his residence other than his address and the fact that he worked in landscaping. While the letter suggests that [REDACTED] was in the United States for the time indicated, there is no evidence in the record that she resided at the addresses listed as claimed. Because the affidavit is significantly lacking in relevant detail, it lacks probative value and can be given only minimal weight as evidence of the applicant's residence at the noted address from 1981 through 1986; and,
- A letter notarized on May 28, 2004, from [REDACTED] asserts that the applicant lived with him at [REDACTED] California from December 1986 to December 1987. He asserts that in December 1987, they moved to Delano, California, where they both worked as farm laborers. Mr. [REDACTED] asserts that the applicant left the country from February 1988 to March 1988, to visit his family. He asserts that the applicant moved back in with him in June 1988 and that they lived together at [REDACTED] in Napa, California. He asserts that the applicant moved out in January 1990 and that the applicant lived with him again from July 1990 to December 1996. While the addresses provided are generally consistent with the information the applicant listed on his

Form I-485, this letter lacks any details that would lend credibility to Mr. [REDACTED]-statements, and there is no evidence in the record that he resided at the addresses listed as claimed. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period.

For the reasons noted above, this affidavit can be given little evidentiary weight and is of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, the affidavit did not include any supporting documentation of the affiant's presence in the United States during the requisite period.

The record of proceedings contains other documents, including a letter notarized on May 29, 2002, from [REDACTED] stating that the applicant has been living with him since December 1996; a letter from 7 Eleven, stating that the applicant has been working there since July 2000, 2003, 2005, and 2006, U.S. Internal Revenue Services Forms W-2, Wage and Tax Statements and Forms 1040, U.S. Individual Income Tax Returns; bank records from Wells Fargo; and invoices from Dish and AT&T. These documents all indicate physical presence after May 4, 1988, and do not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in April 1981, and to have resided for the duration of the requisite period in Chicago. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance on affidavits, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

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