U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: Los Angeles Date: SEP 19 2006

MSC 02 117 60561

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. All documents have 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 (AAO) on appeal. The appeal will be sustained.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant reiterates the circumstances surrounding his initial entry into the United States in December 1981 and his places of residence in this country since such date.

An applicant for permanent resident status 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).

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 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 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 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 to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on June 6, 1991. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant's addresses of residence were listed as '[redacted] in Huntington Park, California from December 1981 to January 1983, and [redacted] in South Gate, California from January 1983 to June 6, 1991, the date the Form I-687 application was submitted. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant's sole absence was listed as a trip to Mexico to visit his parents from June 6, 1987 to July 3, 1987. The applicant's employment during the entire requisite period was listed as a sole employer in Commerce, California at part #36 of the Form I-687 application where applicants were asked all employment in the United States since entry. A review of parts #48 through #51 of the Form I-687 application reveals that the document had been prepared by an individual other than the applicant.

The applicant submitted five affidavits in support of his claim of residence in the United States since prior to January 1, 1982. The testimony contained in these affidavits is consistent with the claims and testimony made by the applicant on the Form I-687 application.

The record shows that the applicant also submitted two affidavits signed by [redacted] and [redacted] respectively. Both affiants stated that they had personal knowledge that the applicant resided in the United States since 1989, and to their best of knowledge he began his residence in this country in 1981. However, the probative value of these two affidavits is limited in that neither affiant testified that he had direct knowledge regarding the applicant's residence in the United States during the requisite period.

Subsequently, on January 25, 2002, the applicant filed his Form I-485 LIFE Act application. The applicant was interviewed at the Los Angeles, California, District Office on May 17, 2004. The record reflects that the applicant utilized the services of another individual who was present at the district office on this date as an interpreter and translator as the applicant is a Spanish-speaking native of Mexico for whom English appears to be a second language. Although this individual signed a statement attesting to his competency and fluency in both English and Spanish, the record contains no information, confirmation, or certification reflecting this individual's ability and proficiency in providing simultaneous interpretation and translation in these languages. In addition, the record does not contain any documentation such as interview notes or a narrative statement to reflect questions asked by the interviewing officer and responses provided by the applicant during the course of this interview. Further, the record contains an affidavit of witness dated May 17, 2004 that is written entirely in English and signed by both the applicant and the interviewing officer, but is not signed by the individual who acted as interpreter and translator at the interview. This is significant in that this individual was responsible for conveying the meaning and content of the affidavit to the applicant. These circumstances bring into issue whether the applicant fully understand the nature and meaning of the English language statements in this affidavit.

The affidavit contains the applicant's sworn testimony relating to his initial entry into the United States in December 1981 and places where he subsequently worked and lived in Los Angeles, California. The affidavit reflects that the applicant declared that he entered the country for economic reasons by crossing the border from Mexico at San Ysidro, California on December 15, 1981 with a group of friends. The applicant testified that he and his friends proceeded to "Los Angeles" where they initially stayed in the streets. The applicant indicated that he then resided with an individual who owned a carpenter shop for almost ten months. The applicant stated that he met a friend who made baskets in [redacted] in Los Angeles. The applicant declared that he worked there for almost three years and lived in the place they made the baskets. The applicant testified that he never left the United States since entering in 1981.

In the notice of intent to deny issued on May 18, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States because of conflicts in his testimony in the original Form I-687 application and the subsequent affidavit of witness dated May 17, 2004. Specifically, the district director asserted that the applicant stated that he had lived in City of Los Angeles, California in the affidavit despite having testified that he lived in Huntington Park, California and South Gate, California on the Form I-687 application. The district director noted that the applicant had testified that he worked only in Commerce, California and had been absent from this country only once in June and July of 1987 during the entire requisite period on the Form I-687 application, but then subsequently offered contradictory testimony relating to his employment and lack of absences from this country in the affidavit.

However, a review of the affidavit reveals no statement that could be attributed to the applicant in which he acknowledged living in the City of Los Angeles, California. Further, the City of Los Angeles, California, Huntington Park, California, South Gate, California, and Commerce, California are all located in very close proximity in the greater Los Angeles metropolitan area. A search of addresses on the website located at www.mapquest.com reveals no findings for a [redacted] address in any of these locations, but does provide results for [redacted] in the City of Los Angeles, California and Commerce, California and [redacted], in South Gate, California. While the district director may be correct in stating that the applicant offered contradictory testimony relating to his employment and lack of absences in the affidavit when compared to his prior testimony, the statements in the affidavit relate to events that occurred over twenty years ago, a significant and considerable length of time. As discussed previously, the probative value of the affidavit has been diminished because it is uncertain if the applicant fully understood the nature and meaning of the English language statements in this affidavit. In light of these circumstances, the affidavit provided by the applicant at his interview on May 17, 2004 cannot be considered as dispositive in determining the credibility of his claim of continuous residence in this country prior to January 1, 1982.

The statements of the applicant on appeal regarding the circumstances surrounding his initial entry into the United States in December 1981 and his places of residence in this country since such date have been considered. In this instance, the applicant submitted evidence, including affidavits, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E-M-*, 20 I&N Dec. 77, 79-80

(Comm. 1989), when something is to be established by a preponderance of evidence, the proof submitted by the applicant has to establish only that the assertion or asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant establishes by a preponderance of the evidence that he satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act. Consequently, the applicant has overcome the basis of denial cited by the district director.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.