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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: HOUSTON Date:
MSC 02 245 60905

JAN 0 9 2007

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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, counsel asserts that several assumptions and statements made by the adjudicating officer were inaccurate, and that the application was improperly denied. Counsel indicated on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. In response to an inquiry by the AAO, counsel stated in a December 8, 2006 facsimile transmission that his legal argument was contained on the Form I-290B, and that no separate brief was submitted. Therefore, the record will be considered complete as presently constituted.

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. Section 1104(c)(2)(B) of the LIFE Act; 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 Citizenship and Immigration Services (CIS) 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).

In his Notice of Intent to Deny (NOID) dated November 4, 2004, the director stated:

> [O]n July 29, 2003, you appeared for your interview for adjustment under the LIFE Act. During the interview you informed the Service Officer, under oath verbally, and in a sworn statement, that you first entered the United States at an unknown date in 1979 with a valid B1 (business visa). You stated that you departed the country (2) years later to return to Mexico to sell machine equipment. You further claim that each time that you traveled you made legal departures and entries. You commented that your wife and children entered the United States in 1983. If in fact, you did enter the United States in 1979 with a B1 visa, then you were not in an unlawful status prior to January 1, 1982.

The director also stated the U.S. immigration records reflected that the applicant made numerous entries and departures from the United States pursuant to his B1/B2 visa during the qualifying period, and that the applicant failed to list all of these absences on his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on July 21, 1990. The director also noted that, in order to receive a B1/B2 visa, the applicant would have had to convince a U.S. State Department official that he had resided in Mexico for 90 days prior to issuance of the visa.

In his November 29, 2004 letter responding to the NOID, counsel stated that the applicant's first child was born in 1985, therefore the applicant "could **not** have stated that his children entered the United States in 1983 because he did not have any children then." [Emphasis in original.]

The interviewer's notes recording the applicant's interview on July 29, 2003 contains the following:

> [The applicant] first entered the United States in 1979 illegally with a business visa to sell leather goods. He claims that he left the United States 2 years later staying in Mexico 2 weeks. He claims that he went to sell his machine equipment. He claims that each time he left the country, he left legally. He further revealed that his wife and children came to the United States in 1983. He further claims that each time he reentered the US, he re-entered legally.

The record reflects that the applicant was placed under oath; however, the interviewer's notes do not reflect that the applicant acknowledged the accuracy of these statements, as the Form I-648 is not signed by the applicant or his representative. Contrary to the NOID, the record contains no other sworn statement by the applicant attesting to the entry of his wife and children as outlined in the interviewer's notes.

On a form questionnaire to determine class membership, which he signed under penalty of perjury on July 24, 1990, the applicant stated that he first entered the United States on July 15, 1979 as a "non-immigrant." On his Form I-687 application, the applicant did not acknowledge any entries pursuant to a visa and admitted to only two absences from the United States during the qualifying period: in April 1983 to get married, and from March to April 1988 "to build up [his] employer's belt business in Mexico."

In response to the NOID, counsel stated that the applicant received a B1/B2 visa on May 19, 1969, which contained no expiration date and that he used this visa to travel between the United States and Mexico during the seventies and eighties. Counsel asserted that the list of entries and absences noted by the director in his NOID did not reflect all of the departures made by the applicant pursuant to this visa. The applicant submitted a copy of an Immigration and Naturalization Service visa dated May 19, 1969 that does not have an expiration date. The document indicates that the bearer is not authorized to be employed in the United States.

The record, therefore, reflects that the applicant entered and departed the United States on several occasions during the requisite period pursuant to a valid non-immigrant visa. Therefore, his entries into the United States, including his claimed initial entry in 1979, were not, *prima facie*, in an illegal status. The question thus becomes whether the applicant violated the terms of his visa and whether the government was aware of the violation.

An applicant for temporary residence 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 the date the application is filed. In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2).

The word "Government' means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I&N 823 (Comm. 1988).

The applicant submitted a March 16, 1990 letter from [redacted] president of The Dynamic Group, in which he stated that during the latter part of 1979 and the first part of 1980, he "personally financed several importations of leather belts" by the applicant "under the name [redacted]. These importations were sold to [redacted] of St. Louis, Mo." In a March 1, 1990 letter, [redacted], a buyer and assistant vice president for [redacted] stated that he had known the applicant since 1979 and had bought belts from him under the company name [redacted]." A January 31, 1990 letter from the Lockwood National Bank indicated that the applicant opened a checking account at the bank in the name of [redacted] and Company on September 5, 1979 and closed it on February 1, 1980. The applicant submitted no other documentation to establish that his presence in the United States prior to 1982 was in violation of his visa status.

Further, the applicant submitted no evidence to establish that the Government had knowledge of any of his work activity that may have been in violation of his visa status. The applicant submitted no tax documentation or other records indicating that he reported his earnings to the Internal Revenue Service or other United States governmental agency. Accordingly, the applicant has failed to establish that his presence in the United States, particularly prior to January 1, 1982, was in an illegal status.

In his NOID, the director listed several departure and entry dates by the applicant as reflected in U.S. immigration records. Of particular note are the departures and reentry dates of February 9, 1984 to April 9, 1984 and January 21, 1985 to August 22, 1985. The applicant did not dispute that these absences occurred, although he did not list them on his Form I-687 application. These dates indicate that the applicant's absences from the United States exceeded the forty-five (45) day limit for a single absence, as well as the aggregate limit of one hundred and eighty (180) days for total absences, from the United States during the qualifying period, as set forth in 8 C.F.R. § 245a.15(c)(1).

"Continuous unlawful residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

> *Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

(1) 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. [Emphasis added.]

The applicant did not claim that any of his absences from the United States during the qualifying periods were due to emergent reasons. Therefore, he did not maintain continuous residency in the United States during the requisite period.

Accordingly, the applicant has failed to establish that his presence in the United States prior to January 1, 1982 was in an illegal status and failed to establish that he resided continuously in the U.S. for the required period.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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