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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAR 2 6 2007
MSC 02 187 60933

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, Los Angeles, California, and is now before the Administrative Appeals Office 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 states that the applicant feels that he has provided sufficient testimony and documentation to support his LIFE Act application, and that the single inconsistency identified by the director is a minor typographical error. Counsel submits a brief in support of the appeal.

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 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 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 a form to determine class membership, which he signed under penalty of perjury, the applicant stated that he first arrived in the United States in May 1981. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant stated that he lived at [redacted] from 1981 to 1988, and at [redacted] from 1988 until March 1990. The applicant further stated that he worked as a gardener from June 1981 to 1986 and as a fruit salesman subsequent to that. On his Form G-325A, Biographic Information, which he signed

under penalty of perjury on February 26, 2002, the applicant stated that he had been self-employed since 1981.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. An August 11, 2004 affidavit from [redacted] attesting to the residency of '[redacted]' who he stated had lived in Inglewood, California since 1980, and that he had been a friend since 1980. The name appears to be a typographical error combining the name of the applicant and the affiant. Nonetheless, assuming that the affiant intended to attest to the continued residency of the applicant, the statement is inconsistent with that of the applicant, who stated that he first arrived in the United States in 1981 and did not state at any time that he had lived in Inglewood. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

2. An April 27, 1990 notarized letter from Salvador and [redacted] in which they stated that the applicant lived with them from 1981 to 1988. According to the [redacted] the applicant lived with them at [redacted] in Torrance and that they later moved to [redacted] in Compton and that the applicant lived with them for two years. The director noted this inconsistency in her Notice of Intent to Deny (NOID) dated November 2, 2004. The applicant did not submit a response to the NOID; however, on appeal, counsel asserts that the inconsistency in the street addresses is a minor typographical error and not a true inconsistency. However, nothing in the record supports this assertion by counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, the [redacted] also stated that the applicant lived with them for two years at [redacted] however, the applicant did not identify this address as one of his residencies on his Form I-687 application. *Matter of Ho*, 19 I&N Dec. at 591. The applicant submitted no documentary evidence to corroborate that either he or the [redacted] lived at the addresses stated during the relevant time frames.

3. An April 1990 notarized letter from [redacted] The letter is in Spanish and is not accompanied by an English translation. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

4. An April 20, 1990 notarized statement from [redacted] in which he stated that the applicant worked for him as a gardener from June 1, 1981 to December 1985 and was paid on a cash basis. Although the applicant did not identify [redacted] as an employer on his Form I-687 application, he did state that he was a gardener from June 1981 to 1986. However, according to his Form G-325A, the applicant has been self-employed since 1981. The applicant submitted no documentary evidence to verify his employment with [redacted] or any self-employment during the required period. *Matter of Ho*, 19 I&N Dec. at 591.

5. A notarized letter from [redacted] in which he stated that he and his wife have known the applicant since 1981. While the notary signed the letter, [redacted] did not; therefore, it has no evidentiary value.

6. A March 9, 2004 letter from [redacted] associate pastor of [redacted] in [redacted] in which he stated that the applicant had been a parishioner of the church since 1982. The letter does not indicate whether the information contained in the letter came from official church records and does not identify any address for the applicant during the qualifying period. 8 C.F.R. § 245a.2(d)(3)(v).

The applicant submitted no contemporaneous evidence of his presence and residency in the United States during the required period. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits and statements submitted by the applicant are inconsistent with other evidence in the record. The applicant submitted no competent documentary evidence to resolve these inconsistencies.

Accordingly, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

The record reflects that on June 14, 1996, the applicant was convicted in the Municipal Court of West Covina Courthouse, Judicial County of Los Angeles, of a violation of Los Angeles Ordinance 8.36.040, peddling goods on the public highway. He was sentenced to pay a fine of $20 and other fees and assessments. Case no. [redacted]

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