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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES Date: MAY 17 2007

MSC 01 314 60447

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. If your appeal was sustained, of 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, and was appealed to the Administrative Appeals Office (AAO). The appeal was rejected on January 9, 2007 as untimely, but the matter is reopened sua sponte pursuant to 8 C.F.R. § 210.2(g) and the appeal accepted on the basis of competent evidence submitted by counsel showing the appeal was in fact filed in a timely manner. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant responded in a sufficient manner to each issue raised by the director, and has submitted sufficient credible evidence of residency to meet his burden of proof.

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 through May 4, 1988. 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 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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the submitted evidence is not sufficiently relevant, probative, and credible.

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

- A letter dated January 25, 2005 from [redacted] Principal of [redacted] Elementary School in Chicago, Illinois, stating that the applicant was a student at the school (then known as the [redacted] School) from April 1981 to September 1982.

- A Certificate of Birth Verification dated December 21, 2004 from the Chicago Public Schools showing the applicant attended the [redacted] Elementary School in 1981 and the [redacted] Elementary School in 1983.

- An affidavit notarized on November 16, 2004 from [redacted] stating that the applicant and his father resided with her at her residence at [redacted] in Los Angeles, California for two years beginning in 1982.

- An affidavit notarized on November 15, 2004 from [redacted] stating that he met the applicant's father in 1980 and saw the applicant frequently "until his family first moved to Mexico in 1983." The affiant states that "they moved to Los Angeles, California from Zamora, Michoacan, Mexico" in 1985, but that he saw the applicant again when he moved to Chicago, Illinois in 1993.

- An affidavit notarized on November 11, 2004 from [redacted] and [redacted] stating that they knew the applicant in Mexico and first saw him in the United tates in

- An affidavit notarized on November 10, 2004 from [redacted] of Los Angeles, California stating he first met the applicant on November 23, 1984 and has interacted with the applicant through their common work as mariachi musicians.

- An affidavit notarized on November 8, 2004 from [redacted] stating that she has known the applicant since he was attending school in 1980.

- Certificates of Birth Verification dated October 29, 2003, and May 19, 2003 from the Chicago Public Schools showing the applicant attended the [redacted] Elementary School in 1981, [redacted] Elementary School in 1981 and [redacted] Elementary School in 1982-1983.

- An affidavit notarized in 2002 from of Chicago, Illinois stating that he knew the applicant in 1983 through 1986.

- An affidavit notarized in 2002 from [redacted] of Chicago, Illinois stating that he knew the applicant in 1983 through 1986.

  An affidavit notarized on August 17, 2001 from the applicant's uncle, [redacted], stating that he knows the applicant resided in Los Angeles, California from January 1982 to June 1985.

  An affidavit notarized on October 2, 1992 from [redacted] of Los Angeles, California stating that he is the owner of the apartments at [redacted] in Los Angeles and rented an apartment to the applicant from July 1985 to December 1987.

- An affidavit notarized on September 17, 1992 from [redacted] of Mariachi Juvenil de Michoacan in Los Angeles, California stating that the applicant was employed as a musician from June 1984 to that date.

- An affidavit notarized on September 14, 1992 from [redacted] of [redacted] Auto Sales in Los Angeles, but apparently signed by the applicant, stating that the applicant was employed by the company from July 1985 to August 1987.

- An affidavit notarized on September 11, 1992 from [redacted] of Los Angeles, California stating that the applicant lived with her from June 1982 to June 1985.

- A letter dated September 9, 1992 from [redacted] of the [redacted] in Los Angeles, California stating that the applicant has been involved in a weightlifting program since July 1985.

  A certificate of completion for an E.S.L./Job Preparation course issued by the [redacted] Multipurpose Center to the applicant on September 16, 1987.

- A State of California Identification Card issued to the applicant on March 9, 1987.
- A photograph of the applicant and other children allegedly taken in Chicago, Illinois in 1981 or 1982.
- A registration card from th[redacted]chool in Chicago showing the applicant attended the school in 1981 and 1982.
- Record of immunization showing vaccinations for the applicant in 1981.

On October 28, 2004, the director issued a Notice of Intent to Deny (NOID) finding that school records submitted by the applicant contained discrepancies and were also inconsistent with the applicant's Form I-687, Application for Status as a Temporary Resident. Specifically, the director observed that the copy of the Record of Immunization submitted by the applicant did not contain the top cover bearing the applicant's name. The director noted that the Certificate of Birth Registration indicates that the applicant attended the [redacted] Elementary School in 1981 and the [redacted] School, but the school registration card submitted by the applicant shows that the applicant began attending [redacted] in September 1982 and does not list the [redacted] School. The director noted that the applicant's address (1826 S. Allport) as listed on the registration card is not listed as a residence on the applicant's Form I-687. Finally, the director observed that the certificate from the [redacted] Multipurpose Center appears to have had the date of issuance altered.

In response to the NOID, the applicant submitted a declaration and additional evidence of residency. In the declaration, the applicant explained that he was submitting a new copy of his immunization record showing the page bearing his name. The applicant stated that the information found on his registration card is correct. The applicant explained that the [redacted] School is listed on the Certificate of Birth Verification because the [redacted] School changed its name to [redacted]. The applicant maintained that he did not list the address of [redacted] on his Form I-687 because he was a child at the time he lived at that address and did not remember it when completing the form. Finally, the applicant explained that the date on the certificate from the Multipurpose Center "was changed by the instructor from 1985 to 1987" and this was done "with the same pen that he signed the certificate."

In a decision to deny the application dated November 30, 2004, the director stated that the information submitted by the applicant "failed to overcome the grounds for denial as stated in the NOID" and denied the application.

On appeal, counsel contends that the director failed to give proper consideration to the evidence submitted by the applicant in response to the NOID. Counsel asserts that the applicant responded in a sufficient manner to each issue raised by the director in the NOID, and has submitted sufficient credible evidence of residency to meet his burden of proof.

Contrary to the counsel's contentions, the applicant has failed to submit evidence that adequately resolves the discrepancies regarding his school attendance and residences in Chicago in 1981 and 1982.

Furthermore, the affidavits submitted by the applicant in response to the NOID contain additional discrepancies that support the director's determination that the evidence in the record is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof. Specifically:

- The fact that the applicant was a child while living in Chicago from 1980 to 1982 is not an adequate explanation for the discrepancy regarding his address at that time. The applicant was of minor age until 1989, but nonetheless succeeded in listing his addresses on his Form I-687. On his Form I-687, the applicant indicated that he resided on [redacted] in Chicago from 1980 to June 1982, rather than at [redacted] as listed on the applicant's school documents. Furthermore, [redacted] the applicant's uncle, states in his affidavit that the applicant begin residing in Los Angeles in January 1982.

- On his Form I-687, the applicant indicated that he moved from Chicago to Los Angeles in June 1982. [redacted] states in her affidavit that the applicant and his father lived with her in Los Angeles for two years beginning in 1982, but lists her address as [redacted] The applicant indicates on his Form I-687 that he did not reside at this address until 1985. Furthermore [redacted] the applicant's uncle, states in his affidavit that the applicant begin residing in Los Angeles in January 1982.

- The applicant's claim to have moved from Chicago to Los Angeles in June 1982 is also contradicted by [redacted] who states in his affidavit that the applicant's family moved from Chicago to Mexico in 1983 and from Mexico to Los Angeles in 1985. It is also contradicted by the school records presented by the applicant, which show the applicant attending school in Chicago in late 1982 and in 1983.

- [redacted] an[redacted] both residents of Chicago, indicate in their affidavits that they knew the applicant from 1983 to 1986, a period in which the applicant claims to have resided in Los Angeles. Neither individual indicate that they ever resided in Los Angeles or knew the applicant there.

- [redacted] states in his affidavit that the applicant resided in an apartment at [redacted] in Los Angeles from July 1985 to December 1987. The applicant does not list this address on his Form I-687 as his residence during that period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The applicant was given notice of many of the discrepancies in the evidence of residency he submitted. It is reasonable to expect the applicant to resolve the contradictions in the evidence through explanations from the affiants and others providing the contradicting testimony and through other credible evidence. The

applicant has failed to present credible evidence of residency that adequately addresses the discrepancies noted herein and demonstrates continuous residency in the United States from before January 1, 1982 through May 4, 1988. These discrepancies raise questions about the authenticity of the remaining documents the applicant has presented in attempt to continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the contradictions in the evidence, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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