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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: EL PASO Date: NOV 20 2007

MSC 01 307 60511

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, or if your case 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, El Paso, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not established 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 contends that the applicant established that he was eligible to adjust status to that of legal permanent resident, and argues that the director did not give the affidavits submitted by the applicant appropriate evidentiary weight. No additional documentation or evidence is submitted in support of the appeal.

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).

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 affidavit for class membership, which he signed under penalty of perjury on September 17, 1990, the applicant stated that he first entered the United States on January 30, 1981 when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant claimed to live at 12100 Main Street, Lamont, California, 93241 during the relevant period.

In an attempt to establish continuous unlawful residence in the United States since before January 1982 through 1988, the applicant furnished the following evidence:

(1) Letter dated September 11, 1990 from [redacted] owner of [redacted] a partnership, verifying that the applicant has been a good acquaintance of his since 1981 and that he has worked for him for the last several years. He claimed that if the applicant "is able to get all of the necessary paperwork," he would employ him as a fulltime employee on his farm. The letter omits the exact period of the applicant's employment, the applicant's address during employment, periods of layoff, his duties for the company, and whether the information is taken from corporate records. It further does not state where employment records are located and whether CIS may have access to those records.

(2) Letter dated June 25, 1990 from [redacted] Volunteer at St. Augustine Church, Lamont, California, stating that the applicant has been "assisting" the church since February 1981. The writer claims that he has known the applicant since February 1981 and that he participated in religious masses, but did not partake in fundraisers, parish meetings, or special events.

(3) Letter dated June 25, 1990 from [redacted] Pastor of St. Augustine's Church located in Lamont, California, claiming that the applicant has been "assisting" the church since the last week of February 1981. In accordance with the statements of Cruz [redacted] he also claims that the applicant participated in religious masses, but has not partaken in fundraisers, parish meetings, or special events.

(4) Undated letter from [redacted] claiming that he has known the applicant since 1981 when he met him at a church fundraiser. He claims that the applicant actively participates in church functions. He does not provide his contact information, nor does he state the address at which he knew the applicant and/or to what church he refers. More importantly, his claim that the applicant is an active participant in the church directly contradicts the statements of the Pastor and of [redacted] who claim that the applicant did not participate in church activities.

(5) Affidavit dated September 17, 1990 from [redacted] claiming that he took the applicant to Mexico on June 1, 1987 because his wife was ill. He further states that they returned to California on June 27, 1987. No additional information regarding this trip is provided.

The record also contains a handwritten letter, in Spanish, from [redacted] Because the applicant failed to submit certified translations of the document, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, this letter is not probative and will not be accorded any weight in this proceeding.

On July 24, 2003, CIS issued a Notice of Intent to Deny (NOID), requesting the applicant to forward proof of his unlawful status in the United States and his continuous physical presence in the United States from January 1, 1982 to May 4, 1988 and November 6, 1986 to May 4, 1988, respectively. The interim district director specifically noted that during his interview on March 11, 2003, the applicant claimed that he had departed the United States for Mexico once a year for thirty days since first arriving in 1981. Neither the applicant nor counsel responded to the NOID, and the application was subsequently denied on May 21, 2004 for failure to overcome the deficiencies or rebut the issued raised in the NOID.

On appeal, counsel asserts that the documentation submitted prior to adjudication established the applicant's eligibility, and claims that the director did not give the affidavits appropriate weight. No new evidence is submitted in support of the appeal.

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 quality 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.

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[1] Handwritten signature is somewhat illegible.

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.

The *Matter of E-- M*—decision provides guidance in assessing evidence of residence, particularly affidavits. In that case, the applicant had established eligibility by submitting (1) the original copy of his Arrival Departure Record (Form I 94), dated August 27, 1981; (2) his passport; (3) affidavits from third party individuals; and (4) an affidavit explaining why additional original documentation is unavailable.

Although the applicant claims he entered the United States in 1981, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. In support of his entry and his continuous unlawful presence in the United States from 1982 to 1988, the applicant relies on his own statement, as well as letters from his church claiming that he became a member in early 1981. The letters from the church are insufficient for several reasons. First, the letter from [redacted] does not meet the regulatory requirements since she is a parish volunteer, not a church official. *See* 8 C.F.R. § 245a2(d)(v)(A). Although the second letter from the pastor satisfies this requirement, the letter omits critical information, such as how he knows the applicant and the origin of the information he attests to. Furthermore, he does not state the address at which the applicant resided during membership or the inclusive dates of his membership. *See* 8 C.F.R. §§ 245a2(d)(v)(C)-(D) and (F)-(G).

Furthermore, the letter from [redacted] raises credibility issues regarding the church letters. While she also claims to have known the applicant since 1981 through church, she claims to have met him through church fundraisers and that the applicant continually participates in church functions. According to the letters from the pastor and the volunteer, however, the applicant did not participate in any church functions other than mass. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant also submits an employment letter from [redacted] or [redacted] for whom the applicant claims to have worked. This letter, however, does not meet the regulatory requirements set forth in 8 C.F.R. § 245a2(d)(i). Specifically, the letter omits the exact period of the applicant's employment, the applicant's address during employment, periods of layoff, his duties for the company, and whether the information is taken from corporate records. It further does not state where employment records are located and whether CIS may have access to those records.

Finally, the record contains a certified translation of the applicant' marriage license, indicating that he was married in Mexico in June 1981. The record further indicates that his first child was born in Mexico in December of 1981. The applicant did not claim that his wife accompanied him to the United States in 1981; therefore, it is questionable as to whether the applicant actually entered the United States in January 1981 as claimed, since his first child must have been conceived in March 1981. It is clear based on the

marriage record that the applicant was in Mexico in June 1981. Since the applicant failed to disclose his alleged departure from the United States in 1981, the entirety of his claims and the validity of his claimed entry in January 1981 are therefore drawn into question. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Based on the insufficiency of this evidence and the contradictions contained therein, it cannot be determined that the applicant was present in the United States in an unlawful status before January 1, 1982.

Furthermore, his continuous unlawful presence in the United States from January 1, 1982 through May 4, 1988 is likewise subject to scrutiny. No primary evidence, such as payroll records, rent receipts, utility bills, etc. have been submitted to show his residence in the United States during this period. The applicant relies merely on affidavits and letter, most of which are insufficient for the reasons set forth above.

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 from organizations 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).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information. As discussed above, the letters from [redacted] and St. Augustine's Church do not satisfy the above criteria. Furthermore, the applicant's address for the requisite period is the address provided on [redacted] but [redacted] made no claim that the applicant resided with him or on his farm during the requisite period.

The applicant has likewise failed to establish his continuous physical presence in the United States from November 6, 1986 to May 4, 1988. Again, the only evidence in the record are the letters discussed above, which provide no specific details regarding the applicant's continuous presence during this period. Although an affidavit by [redacted] documents a trip by the applicant to Mexico in June 1987, this affidavit lacks sufficient detail and does not state the nature of the affiant's knowledge. Furthermore, the applicant claimed in his interview that he visited Mexico once a year from 1981 to 1990, contrary to his claims of continuous presence in the United States but for the 1987 trip to Mexico. As previously stated, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent

objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The record as it currently stands, therefore, does not contain enough information to support a credible finding that the applicant was continuously present in the United States during the requisite period.

Given the absence of contemporaneous documentation and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status from January 1, 1982 through 1988. Therefore, the applicant is 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.