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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: PHOENIX (LAS VEGAS, NV) Date: AUG 0 1 2008

MSC 03 063 60188

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. 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, the applicant submits a letter and additional documentation.

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 states 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, who claims to have entered the United States without inspection on July 17, 1981, filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on December 2, 2002, and was interviewed in connection with his application on August 22, 2006.

On September 18, 2006, the district director issued a Notice of Intent to Deny (NOID) the application because although the applicant had submitted verifiable documentation dated in or after 1989, he had failed to submit sufficient documentation to establish his continuous unlawful status in **the United States from before January 1, 1982, through May 4, 1988. The district director** specifically advised the applicant that receipts and other documentation submitted for the years prior to 1989 did not "identify information for or about [the applicant] or the company issuing the document," and that the remaining documentation lacked credibility due to the following inconsistencies and discrepancies contained in the documentation and testimony he had provided:

- When filing his Form I-485, the applicant claimed to have resided at [redacted] California, from July 1981 to March 1988. However, at interview, the applicant could not recall the address, but stated that the major cross roads were Compton and Lynwood. The district director noted that when using a map program of the alleged address, there was no Compton Street found in the general vicinity of the address.

- The applicant submitted an original ledger card from Casa Daly Furniture showing that he opened an account in April 1983, at the age of 18, in store credit for over $1,600. At interview, the applicant claimed that the woman he lived with was somehow connected to the account; however, the card only showed his name (no address) and all of the entries were in black ink – other than the applicant's name which was written in blue ink. Furthermore, all of the payments made over a two-year period appeared to have been entered in the same hand-writing. A Citizenship

and Immigration Services (CIS) officer contacted a 30-year employee of Casa Daly Furniture who stated that the account number on the ledger card submitted by the applicant would not have been used and that it did not appear that the document had been issued by the company.

- The applicant claimed that his only source of income from 1981 to 1988 was from refereeing soccer games and presented a letter from the South Gate Soccer League, dated July 5, 1990, stating that the applicant officiated at about ten games per week for which he was paid $25.00 per game. At interview, the applicant stated that the organization still existed, but under a different name. The letter did not contain a phone number for verification and a search by CIS for any information on the league, or its successor organization, was unsuccessful.

- The applicant submitted a letter from the Latin American Human Rights Association, dated September 24, 1990, stating that he was a member in good standing as of October 12, 1981 (when he was sixteen years of age). The letter itself was of dubious quality and although signed with an original signature, the stationery was of poor quality and the letterhead appeared to have been colored with a marker. Telephone calls made by CIS to the two telephone numbers listed for the organization revealed that they did not belong to the organization and efforts to search directory assistance and the internet in order to contact the organization were unsuccessful.

The district director granted the applicant thirty days to respond to the issues raised in the NOID. The record reflects that the applicant failed to respond.

On January 25, 2007, the district director denied the application. The applicant filed an appeal from the district director's decision on February 23, 2007.

On appeal, the applicant claims to have submitted documentation to establish his eligibility for adjustment of status under the LIFE Act and resubmits documentation previously provided, including affidavits from [redacted] and [redacted] and [redacted] both of California, stated that they had known the applicant since 1981 when he was a referee in the South Gate Soccer League. [redacted] also of California, stated in a fill-in-the-blank affidavit, that he met the applicant at a party in Los Angeles and they had seen each other since. None of the affiants attest to their specific knowledge of the applicant's alleged entry into the United States, are generally vague as to how they date their acquaintances with the applicant - how often and/or under what circumstances they had contact with the applicant during the relevant period - and the affidavits lack details that would lend credibility to the affiants' claims. As such, the statements can be afforded only minimal weight as evidence of the applicant's residence and presence in the United States.

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).

Due to the lack of credibility in the documentation and testimony provided, 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). Given this, he 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.