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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: AUG 29 2008

MSC 02 338 62641

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, Los Angeles, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant submits a statement and additional evidence for consideration.

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 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record contains a Form I-687 Application that was signed by the applicant on September 25, 1990. At part #33 of this application where the applicant was asked to list all of his residences in the United States since his first entry, he indicated that during the requisite period he resided at [redacted] in Apartment [redacted] in Lancaster, California from July 1981 until August 1989. At part #35 of this application where the applicant was asked to list all of his absences from the United States since his first entry, he stated that he was absent once during the requisite period when he went to Mexico to see his father who was sick. He stated that he was absent from November 17, 1987 until December 24, 1987. At part #36 of this application, where the applicant was asked to state all of his employment since his first entry, he indicated that he was employed by [redacted] from July 1987 until November 1989.

The record contains notes taken during the applicant's interview with an immigration officer on November 16, 1990. The record shows that the applicant testified that he met [redacted] in Mexico and that employed him as a mechanic beginning when he began residing in the Untied States and then for the duration of the requisite period.

The record also contains notes taken at the time of the applicant's interview with an immigration officer on February 22, 2007. In this interview, the applicant stated that he resided with [redacted] at an address that the applicant could not recall on Avenue J in Lancaster for the duration of the requisite period. He stated that he worked helping to wash cars and as a mechanic in his home business. He stated that [redacted] was his neighbor in Mexico.

For an applicant to meet their burden of proof, an applicant must provide evidence of eligibility apart from their own testimony. 8 C.F.R. § 245a.12(f). 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).

The applicant submitted the following evidence that is relevant as proof of his residence in the United States during the requisite period:

- An untranslated letter that states that the applicant was in Morisquillas, which is in Guanajuato, Mexico, to visit his father who was in the care of [redacted] from November 17 until December 24, 1987.

- An affidavit from [redacted] that was notarized on October 2, 1990. The affiant states that he has known the applicant since July 1981 and states that he continues to be friends with the applicant, seeing him one to two times each month. The affiant fails to

indicate how he is able to determine the date he first met the applicant. He does not state when or where he first met the applicant and whether he first met him in the United States.

- An affidavit from [redacted] that was notarized September 21, 1990. The affiant states that the applicant resided in his own house and that he supported the applicant by providing him with room and board and a $50.00 per month stipend in exchange for helping the affiant around the house and with fixing and cleaning cars. He states that he and the applicant resided together at [redacted] 1981 until 1989. Though this affiant provides testimony that is consistent with other documents in the record, the affiant failed to indicate how he was able to determine the applicant's date of first arrival into the United States.

In the Notice of Intent to Deny (NOID), issued on March 29, 2007, the director noted the evidence submitted by the applicant in support of his application and stated that the applicant's claim at the time of his interview that he resided on [redacted] in Lancaster during the requisite period was not consistent with the affidavits on which the affiants claim the applicant resided on [redacted] in Lancaster. The director granted the applicant 30 days within which to submit additional evidence in support of his application. The record reflects that in response to the NOID, the applicant submitted a request for additional time to submit more evidence in support of his application, namely income tax statements from the Internal Revenue Service.

It is noted that a search of a map of Lancaster, California reveals that [redacted] is a smaller street that is located directly adjacent to Avenue J, a main street, in Lancaster, California. Therefore, the AAO finds it reasonable that the applicant might remember the main street that was directly adjacent to his address of residence approximately 20 years previously.

In the Notice of Decision, dated May 4, 2007, the director denied the application, stating that he was denying the applicant's request for additional time to submit evidence. In doing so, the director notes that the record already contains a Social Security Statement which indicates that the applicant did not file taxes during the requisite period. Therefore, because the applicant did not submit additional evidence in support of his application in response to the director's NOID, the director denied the application.

On appeal, the applicant submits a print out from the Social Security Administration. This print-out shows the applicant worked in the United States from 1990 until 2007. Because this print-out does not establish that the applicant worked in the United States during the requisite period, it is not relevant to the matter at hand.

The AAO has reviewed the documentation submitted by the applicant in support of his claim of having maintained continuous residence in the United States for the duration of the requisite period. Though the applicant has submitted affidavits from [redacted] in which the affiants state that the applicant began residing in the United States in July 1981, these affiants do not state how they are able to determine the specific month and year the applicant first

began residing in the United States. Further, these affidavits are from 1990, and the applicant has stated that he is no longer in contact with [redacted] No mention is made by the applicant of [redacted] during his interview. In addition, he has not provided CIS with updated contact information for either affiant. Because he has not provided updated contact information from these affiants, their affidavits are not amenable to verification. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Finally, while the applicant claimed during his interview on February 22, 2007 that he first entered the United States in July 1981, he also claimed that we was 12 years old when he entered the United States. Given the applicant's date of birth of May 20, 1970, his claimed initial entry would have been sometime after May 20, 1982, making him ineligible for the benefit sought in this matter.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988 as required under Section 1104(c)(2)(B) of the LIFE Act. 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.