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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JAN 2 5 2008

MSC 03-015-61465

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).

IN 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, Los Angeles, on April 7, 2006. The decision was appealed to the Administrative Appeals Office (AAO). The AAO rejected the appeal on October 1, 2007, finding that it had been untimely filed. The applicant, through counsel, has now submitted proof that the appeal was timely filed along with a Motion to Reopen. In response, the AAO has sua sponte reopened its prior decision.[1] The AAO's decision of October 1, 2007 will be withdrawn. The appeal will be dismissed.

The director determined in a Notice of Intent to Deny (NOID), dated March 7, 2006, that the applicant had not provided evidence to adequately establish that he resided in the United States in a continuous, unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director noted that the documents submitted by the applicant established that his first entry into the United States was in April, 1982, and that the applicant reiterated that fact under oath during his interview. The applicant responded to the NOID with a letter, dated March 13, 2006, in which he apologized for answering incorrectly questions posed to him at his prior interview, noting that he was on diabetic medication and not feeling well and nervous during the interview. He added that the April 1982 date that he provided at his interview was not when he first entered the United States but when he returned to the United States from Canada and that the correct date of first entry, October 1980, was as he had previously noted and as indicated on various documents submitted in 1989. However, the director subsequently denied the application, finding that the applicant had failed to overcome the grounds of denial as stated in the NOID.

On appeal, the applicant asserts that he is "qualified" for permanent residence as claimed and he submits additional documents in support of his claim. The AAO has reviewed all of the evidence and has made a de novo decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.[2]

An applicant for permanent resident status under section 1104 of the LIFE Act (Life Legalization applicant) 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. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States, and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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).

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[1] Motions to reopen a proceeding or reconsider a decision on an application for permanent resident status under section 1104 of the LIFE Act are not considered. 8 C.F.R. § 245a.20(c). The AAO may, however, sua sponte reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

[2] The AAO reviews each case de novo as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

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.* at 80. 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to 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). 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).

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case the applicant applied for such class membership by submitting an "Affidavit for Determination of Eligibility for Late Application for Legalization under LULAC v. INS [. . .]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," dated November 29, 1989. On October 15, 2002 the applicant filed Form I-485, "Application to Register Permanent Resident or Adjust Status," pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States since a date prior to January 1, 1982 through May 4, 1988. The applicant has provided the following evidence relating to the requisite period:

- An "Affidavit of Witness" form (undated) and a "Renters Verification" form, dated November 24, 1989, both signed by [redacted]. The undated form states that the applicant resided at [redacted] Los Angeles, California from October 1980 to March 1983 and that Ms. [redacted] "is able to determine the date of the beginning of her acquaintance with the applicant in the United States" from the fact that "the applicant is my friend." On the 1989 form, [redacted] states

that the applicant resided at those same addresses from October 1980 through May 1987, and she signs as the landlord. The forms are not notarized, and no identification documents accompany the forms; the addresses listed are consistent with information provided by the applicant on his 1989 Form I-687. The information provided by [redacted] is inconsistent, however, as she first describes herself as the applicant's friend, and then as his landlord. These documents, forms that lack personal details and that contain contradictory information, can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.

Duplicates of the above-noted forms, an "Affidavit of Witness" form (undated) and a "Renters Verification" form, dated November 24, 1989, but both signed by [redacted] The undated form states that the applicant resided at [redacted], California, from June 1987 to "present" and that [redacted] "is able to determine the date of the beginning of his acquaintance with the applicant in the United States" from the fact that "the applicant is my friend." On the 1989 form, [redacted] states that the applicant resided at that same address from June 1987 through "present," and he signs as the landlord. As with the prior forms, these forms are not notarized, and no identification documents accompany them; the addresses listed are consistent with information provided by the applicant on his 1989 Form I-687. The information provided by [redacted] is inconsistent, however, as he first describes himself as the applicant's friend, and then as his landlord. These documents, on duplicate forms and containing the exact same language as the statements from but for the places of residence, can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period for the same reasons as noted above

- Five copies of a "CSS/LULAC Legalization and LIFE Act Adjustment Form to Gather Information for Third Party Declarations" ("Information Forms"), accompanied by respective affidavits and identification documents from [redacted] and [redacted] The five Information Forms indicate that the affiants have all been in the United States for the requisite period, they met the applicant at parties in "December 1980" or "May 1982" or at the affiant's home in "December 1980" or "in Los Angeles in 1981." However, these forms are not signed; as such, they are not relevant and can be given no evidentiary weight. The affidavits that accompany the Information Forms were signed by the respective affiants and notarized on May 2nd or 3rd, 2006. However, all five affiants attest to the applicant's presence in the United States since 1999 or 1989. As the requisite period ends in 1988, these affidavits are irrelevant and not probative of the applicant's residence in the United States during the statutory period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have no probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Not one affiant indicates credible personal knowledge of the applicant's entry to the United States in 1980 or credibly attests to his presence in the United States during the requisite period. The only two affiants who attest to the applicant's residence in the United States during the requisite period provide contradictory information regarding their relationship to the applicant. The duplicative language, use of forms and failure to provide details also detract from the probative value of these affidavits.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States either in October 1980 or April 1982. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record. Moreover, although he attempted to explain why he provided contradictory dates of entry, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of his application. It is incumbent upon the 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, 591-92 (BIA 1988).

In addition, the AAO notes another inconsistency in the record that casts additional doubt on the applicant's dates of entry and residence in the United States. The applicant listed his "[a]bsences from the United States since entry" on his 1989 Form I-687, as required at Part 35, stating that he made five business trips to Canada between April 1982 and June 1987, and failing to note any trips to the Philippines. This is contradicted, however, on his Form G-325A, Biographic Information, included with his LIFE Legalization Application, where he indicates that he was married in the Philippines in December 1984.

The absence of credible and probative documentation to corroborate the applicant's claim of entry and continuous residence for the 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 lack of credible supporting documentation and the contradictions noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.