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

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FILE: [redacted] Office: LOS ANGELES Date: JUL 10 2008

MSC 03 099 60260

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or 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 District Director, Los Angeles, California, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding that the applicant failed to establish continuous residence in an unlawful status in the United States during the period required under the LIFE Act. The director found that the applicant's testimony was contradictory and that he relied on supporting documentation with minimal probative value.

On appeal, the applicant asserts that the documentation he submitted establishes that he has resided here since November 1981 through the required period. The applicant submits an affidavit from his sister and her husband and asserts that it would be an extreme hardship for this entire family if his application were not granted.

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 or 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).

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 record reflects than on January 7, 2003, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On July 28, 2006, the applicant appeared for an interview based on his application.

On July 28, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application, finding that the documents submitted by the applicant failed to establish that he entered the United States before January 1, 1982, and that he did not establish continuous unlawful presence prior to January 1, 1982, through May 4, 1988. The director found that the affidavits submitted by the applicant were not sufficiently detailed or specific, and were not corroborated by other evidence in the record. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

In response, the applicant submitted three updated affidavits from individuals who had previously submitted fill-in-the-blank affidavits. The applicant asserted that he had been in continuous residence in the state of California since 1981 and had lived with [redacted] since November 1981.

On September 2, 2006, the director denied the application, finding that, given the outright and direct contradictions and conflicts in the applicant's testimony, and reliance upon supporting documentation with minimal probative value, the applicant failed to establish continuous residence in an unlawful status in the United States for the entire period from prior to January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts that the documentation he submitted establishes that he has resided here since November 1981 through the required period. The applicant submits an affidavit from his sister and her husband and asserts that it would be an extreme hardship for this entire family if his application were not granted.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States before January 1, 1982, and his continuous residence from January 1, 1982, through May 4, 1988.

The record of proceeding contains the following evidence relating to the requisite period:

Letters and Affidavits

A form affidavit and an updated affidavit from the applicant's hairdresser. asserts that she met the applicant in December 1981 when he came into the hair studio where she worked and she cut his hair. She states that he liked the way she cut his hair and she became his regular stylist and cut his hair all the time. She states that they became friends. She lists where she was living and working during the 1980's and 1990's. She states that she maintained contact with the applicant because he kept her as his hair stylist for many years. She states that she started doing his wife's hair as well and they became good friends. The affidavits contain no meaningful details regarding any relationship with the applicant during the requisite period. In both letters, [redacted] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than the fact that he kept her as his hair stylist "for many years" and she cut his hair "all the time." Finally, she does not explain how she recalls specifically that it was in December 1981 that she first met the applicant;

- A form affidavit and an updated affidavit from Mr. [redacted] asserts that the applicant worked for him as a laborer from October 5, 1984, to November 20, 1987. He provides the address where he was living when he first met the applicant, but not the address where the applicant was living. These affidavits can be given little evidentiary weight because they lack sufficient detail and information required by the regulations. Specifically, [redacted] as the applicant's employer, failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, [redacted] also failed to declare which records his information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative, state the reason why such records are unavailable. In addition, the letter from [redacted] a listed the applicant's position but did not list the applicant's duties;

- A form affidavit and an updated affidavit from [redacted] Ms. [redacted] states that she met the applicant in November 1981 when a family member introduced them. She states that he moved in with her family and her in 1981. She states that she maintained contact with the applicant because he lived with her from 1981 to 1989 and that they became very good friends, more like

family. Again, the affidavits contain no details regarding any relationship with the applicant during the requisite period, and fail to state exactly when or where the affiant and the applicant met. [redacted] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than the fact that he lived with her and her family;

- A form letter dated July 22, 1991, from Santa Rosa Church in San Fernando, California. The letter, signed by [redacted] lists the applicant's address in Sun Valley, California. The letter states that the applicant is/has been a member of the Santa Rosa Church from 1982 to present time. The letter allows the affiant to fill in a statement that he or she "knows [the applicant] because: _____ [redacted]n added "he attends Sunday Mass and is a registered member of our parish." The form states that the source of the information in the letter is the parish records. The letter fails to state the frequency with which the applicant attended Sunday Mass;

- An "Employment Affidavit," dated November 27, 1989, signed by [redacted] The form is a verification of employment of the applicant, and lists [redacted] address. It indicates that the employment information was prepared from the work located at [redacted]., Beachwood, New Jersey, from December 16, 1981, to September 5, 1986. It indicates that there were no periods of layoff. It lists the job duties as painting, sheetrocking, and masonry; and,

- An updated "Affidavit of Witness," dated the 25th day of an illegible month in 2006, signed by [redacted] and [redacted]. Mr. and Mrs. [redacted] state that they currently live in Miami, Florida. They state that they met the applicant in December 1981 through [redacted], who was the applicant's girlfriend at the time and is now his wife. They state that they invited them to come to their home in New Jersey. They state that when they first met the applicant, they were living at [redacted] in Beachwood, New Jersey. They state that the applicant worked for [redacted] from December 16, 1981, to September 5, 1984. They state that they have remained in contact with the applicant for the last 25 years even though they live some distance apart and that he applicant has become a very good friend of the family.

These affidavits can be given little evidentiary weight as they are inconsistent with other affidavits and other documents in the record of proceedings. For example, on his Form I-687, Application for Status as Temporary Resident, dated June 18, 1991, the applicant listed his employer as [redacted] in New Jersey from December 1981 to September 1984. The November 27, 1987, affidavit from [redacted] listed the same information. This information directly contradicts the information provided by [redacted] and [redacted] and by the applicant's statement on appeal. In his affidavit, [redacted] indicates that he lived in New

Jersey and that the applicant worked for him in New Jersey from December 16, 1981, to September 5, 1984. Mr. [redacted] indicated that the applicant worked for him in California as a laborer from October 5, 1984, to November 20, 1987. In his statement in rebuttal of the NOID, the applicant indicated that he had lived continuously in California with [redacted] since 1981. Ms. [redacted] indicates that the applicant lived with her from 1981 to 1989. It is incumbent on the applicant 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 has not explained the inconsistencies or to submit any objective evidence to explain or justify the inconsistencies. Therefore, nothing in the record can be given any evidentiary weight.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States without inspection on June 30, 1987, and to have resided for the duration of the requisite period in California. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

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.