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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK Date: JUL 24 2008

MSC 03 092 60006

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. 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.

for 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 (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the documentation previously submitted by the applicant is sufficient to establish his eligibility for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. *See* 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.

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 applicant, a native of Colombia who claims to have resided in the United States since November 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on December 31, 2002. At that time the only evidence in the record of the applicant's residence in the United States during the 1980s was a series of affidavits dating from 1989 and 1990. They included the following:

An affidavit by [redacted], a resident of Corona, New York, dated November 10, 1989, stating that the applicant rented a room from her at [redacted], in Corona, from November 1981 to September 1989.

- An affidavit by [redacted], residing at [redacted] in Bronx, New York, dated December 28, 1989, stating that she had known the applicant since December 1981 and knew that he resided at [redacted] in Corona from November 1981 to September 1989, at which time he moved to [redacted] in Bronx, New York.

- An identically worded affidavit by [redacted], residing at [redacted] in Bronx, New York, dated December 28, 1989, stating that he had known the applicant since December 1981 and knew that he resided at [redacted] in Corona from November 1981 to September 1989, at which time he moved to [redacted] in Bronx, New York.

Another identically worded affidavit by [redacted] residing at [redacted] in Bronx, New York, dated May 8, 1990, stating that she had known the applicant since December 1981 and knew that he resided at [redacted] in Corona from November 1981 to September 1989, at which time he moved to [redacted] in Bronx, New York.

On October 11, 2006, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director cited a number of discrepancies between the applicant's oral testimony at his interview for LIFE legalization on October 5, 2005 and agency records in the applicant's administrative file, including the information provided on his Form I-485 and his Form I-687 (of which there are two in the record, dating from 1989 and 2005). In the director's view, the evidence of record indicated that

the applicant's initial entry into the United States occurred sometime after May 4, 1988. The applicant was granted 30 days to submit additional evidence.

Counsel responded to the NOID by resubmitting photocopies of the affidavits from 1989 and 1990, but did not address the specific evidentiary discrepancies cited by the director or submit any additional documentation.

In a decision dated November 27, 2006, the director denied the application, noting that the applicant had failed to resolve particular evidentiary discrepancies which undermined his claim of continuous residence in the United States from late 1981 through May 4, 1988.

On appeal, counsel reiterates the applicant's claim to have entered the United States before January 1, 1982 and lived continuously in the country through May 4, 1988. Counsel states that the applicant does not have any more documentation to submit and contends that the evidence already on file is sufficient proof of the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The applicant has no contemporary documentation from the 1980s demonstrating that he resided in the United States during the years 1981-1988. For someone claiming to have lived and worked in this country continuously since late 1981, it is remarkable that he is unable to produce a solitary document dating before 1989.

The affidavits from 1989 and 1990 have minimalist, fill-in-the-blank formats with little personal input by the affiants. While they all claim to have known the applicant since late 1981, the affiants provide little or no information about how they met him, his life in the United States and their interaction with him over the years, and where he worked during the 1980s. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Given the lack of probative evidence in the record, the AAO determines that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.