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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: JUN 24 2008

MSC 03 239 61298

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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, San Francisco, 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 requests reconsideration of the decision, and provides a statement and additional evidence in support of the appeal.

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).

In the affidavit for class membership, which he signed under penalty of perjury, the applicant stated that he first arrived in the United States in 1981 when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant claimed to live at [redacted], Los Angeles, California 90063 from October 1981 to August 1989. Regarding his employment, the applicant claimed on the same form that he was employed in the following positions during the requisite period:

January 1981 to January 1983:	Self-employed[1]
January 1983 to Present:	Carniceria Mexico, Repairman

On both forms, the applicant claimed that he departed the United States once during the requisite period for a trip to Mexico from May to June 1987.

The AAO concurs with the director's finding that the applicant submitted insufficient evidence to establish continuous residence and physical presence in the United States during the requisite period. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant furnished the following evidence:

(1) Affidavit dated February 28, 2004 by the applicant. In this affidavit, the applicant claims that he arrived in the United States in October 1981, and sought out his friend [redacted] with whom he resided at [redacted] in Los Angeles from 1981 until 1988. He claims he recalls this initial date of 1981 because he had just graduated from teaching school. The applicant claims he paid no rent to [redacted]. Thereafter, the applicant claims that his cousin, [redacted] introduced him to [redacted] who hired the applicant as a gardener. He claims that thereafter, [redacted] opened a meat shop called Carniceria Mexico, and that the applicant continued to work for [redacted] at the meat shop where he unpacked and shelved merchandise. The applicant states that he worked for [redacted] until 1989. Finally, the applicant claims that in 1982, he got in touch with a friend, [redacted], who was residing in Campton, California. The applicant claims that he saw Mr. [redacted] a few times.

(2) Affidavit dated February 6, 2004 from [redacted], cousin of the applicant, claiming that the applicant visited him several times in El Monte, California since 1981.

(3) Affidavit dated December 3, 2003 by [redacted] claiming that the applicant has resided in the United States since 1981, and that she has knowledge of his residence because he resided with her in Los Angeles until 1989. Ms. [redacted] claims that she resided at [redacted] until 1988, then moved to [redacted]. She claims they maintain a close relationship and visit often.

(4) Letter addressed to the applicant at [redacted], postmarked February 1, 1982.

(5) Affidavit dated November 26, 2003 and executed on December 1, 2003 by [redacted] claiming that the applicant, his nephew, has visited him several times in the past 20 years.

[1] It is noted that although the applicant claims that he first entered the United States in October 1981, he claims in Section 36 of Form I-687 that he began his self-employment in the United States in January 1981.

(6) Affidavit dated December 4, 2003 by [redacted], claiming that the applicant has resided continuously in the United States since 1982. He claims that they were friends from their hometown in Mexico.

(7) Affidavit dated December 5, 2003 by [redacted], claiming that he has knowledge that the applicant resided in the United States continuously since 1981. Mr. [redacted] claims that he would visit the applicant in East Los Angeles, where the applicant resided with a friend and her family.

(8) Affidavit dated December 4, 2003 by [redacted], claiming that the applicant resided in the United States continuously since 1982 with a close friend in East Los Angeles.

(9) Letter dated December 5, 2003 from [redacted] of Compton Family Dental Practice, claiming that the applicant was a patient of [redacted], DDS in 1986, 1987 and 1988. Ms. [redacted] encloses copies of the applicant' dental records, evidencing that the applicant received treatment on October 29, 1986, February 17, 1987, and January 26, 1988.

(10) Affidavit dated August 26, 1989 by [redacted], claiming that the applicant resided at 142 [redacted], Los Angeles, CA 90063 from October 1981 to August 1989. Mr. [redacted] claims that the applicant's sister worked for him as a housekeeper, and that he met the applicant when he came to pick his sister up from work. Mr. [redacted] further claims that he sees the applicant regularly at parties and holidays.

(11) Affidavit dated August 26, 1989 by [redacted], claiming that the applicant resided at [redacted], Los Angeles, CA 90063 from October 1981 to August 1989. [redacted] states that the applicant is her daughter-in-law's brother, and that she met him in October 1981 when he came to the United States. She states that she sees him regularly when he visits his sister.

(12) Letter dated August 25, 1989 by [redacted], owner of Carniceria Mexico, claiming that the applicant has worked for the company since January 14, 1983 as a repairman and helper. He claims that the applicant was paid in cash. [redacted] further claims that the applicant worked for him in his home as a gardener as of October 1981, and that he offered the applicant a position in his store in January 1983.

Finally, the record contains a list entitled "List of Absences," which is signed by the applicant, which lists the following absences from the United States:

Date of Entry	Dave of Leave
10/81	3/29/85
4/15/85	5/15/87
6/5/87	5/1989
6/1989	Present

In the Notice of Intent to Deny (NOID) dated December 11, 2003, the director requested additional evidence pertaining to the applicant's method of entry in to the United States. Although the applicant submitted an affidavit in response to the request, the director found it insufficient to establish his

eligibility and denied the application on September 23, 2004 based on unsupported affidavits coupled with date discrepancies.

On appeal, the applicant submit a statement describing his continuous unlawful residence in the United States as well as two affidavits in support of his eligibility.

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 during the requisite period. The applicant submitted affidavits and one letter of employment as evidence to support his Form I-485 application. Here, the applicant has failed to meet this burden.

The AAO will first address the letter of employment. The letter from dated August 25, 1989 fails to comply with requirements set forth at 8 C.F.R. § 245a.2(d)(3)(i). While [redacted]'s letter is on employer letterhead stationery, it failed to provide the applicant's address at the time of employment. Under the same regulations, [redacted] also failed to declare whether the information was taken from company records, and failed to identify the location of such company records or state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In addition, the applicant submitted numerous affidavits in support of his application. Each affidavit provided minimal information, and several provided conflicting information. First, the AAO will address the applicant's claims of residence. On his Form I-687, he claims that he resided at [redacted] Street from October 1981 to August 1989. The affidavits of [redacted] and [redacted] corroborate these claims. However, in the applicant's own affidavit dated February 28, 2004, he claims that he resided with [redacted] during this period. [redacted] states in her affidavit that the applicant did in fact reside with him, but claimed that she did not move to [redacted] until 1988. Rather, she claims that she resided at [redacted] from 1981 to 1988. It is incumbent upon the petitioner 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). It is further noted that the postmarked enveloped addressed to the applicant in 1982 is addressed to him at not [redacted]

The affidavits of [redacted] and [redacted] are likewise insufficient. These affiants merely state that the applicant has resided in the United States since 1981 or 1982, but provide no additional details regarding the specifics of their relationship with the applicant or their frequency of contact. Finally, the dental records provided by Compton Family Dental Practice, which showing that the applicant received treatment on one day in 1986, 1987 and 1988, are simply insufficient to show that the applicant resided continuously in the United States during the requisite period. Furthermore, the medical records list the applicant's address at [redacted], not [redacted]

Although the applicant has submitted numerous affidavits in support of his application, the applicant has not provided sufficient documentation of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. None of the affiants indicated how they dated their acquaintance with the

applicant or how frequently they saw the applicant. In addition, none of the affiants, aside from relatives, stated how they met the applicant. 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, there are a number of date discrepancies contained in the record which make it impossible to ascertain whether the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988. On his Form I-687 and his class affidavit, both signed under penalty of perjury, the applicant claimed to have made one trip outside the United States in May 1987. However, during his interview on December 11, 2003, the applicant claimed to have taken three trips outside the United States, in March-April 1985; in May-June 1987; and in May-June 1989. The record reflects that the applicant had two children born in Mexico during the requisite period: [redacted], on January 8, 1986 and [redacted], on February 14, 1987. While the AAO notes that the applicant's trip to Mexico in March-April 1985 appears to coincide with the conception of [redacted], the applicant did not claim to be in Mexico in 1986, thereby raising questions regarding the conception of [redacted], born on February 14, 1987.

On appeal, the applicant submits a statement claiming that his wife came to the United States in April 1986 and stayed with him until May 1986. However, no documentation of his wife alleged trip has been submitted, and it appears this statement is provided merely to refute the findings of the director in the denial notice with regard to this issue. Furthermore, there is no mention of daughter, [redacted] who would have been three months old at the time of this visit, and likely would have accompanied her mother on this alleged trip. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Although two new affidavits from [redacted] and [redacted] are submitted on appeal, they provide no new information to overcome the basis for the director's denial.

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.