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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUN 24 2008

MSC 02 192 60090

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, 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. Specifically, the director found that based on the applicant's sworn statement that he first entered the United States in 1986, he was ineligible to adjust status to that of permanent resident.

On appeal, the applicant requests reconsideration of the decision, and claims that he misunderstood the question posed to him regarding his first entry.

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 form for determination of class membership, which he signed under penalty of perjury, the applicant stated that he first arrived in the United States on November 20, 1980 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 confirmed that his last entry into the United States was in November 1981. The applicant further claimed to live at the following addresses during the requisite period:

December 1981 to December 1984: [redacted]
January 1985 to December 1987:
January 1988 to Present:

Regarding his employment history, the applicant claimed on the same form that he was employed by the following employers during the relevant period:

February 1982 to December 1984:	Soto Gardener and Landscape, Gardener
January 1985 to March 1986:	Gordon Dreyer Construction, Labor
April 1986 to December 1987:	Gonzalez Masonry, Labor
February 1988 to Present:	S&S Masonry, Labor

On the Form I-687, the applicant claimed that he departed the United States once during the requisite period for a trip to Mexico from December 1987 to January 1988. In the form for determination of class membership, the applicant stated he left the United States once, from October 20, 1987 to November 17, 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 April 16, 1990 by [redacted]s, claiming that she has knowledge of the residence in the United States from November 1981 to the present.

(2) Affidavit dated July 13, 2006 by [redacted], claiming that he has known the applicant since October 1981 and that the applicant has maintained continuous residence in the United States.

(3) Affidavit dated July 13, 2006 by [redacted], claiming that he has known the applicant since November 1981, and that he has maintained continuous residence in the State of California.

(4) Affidavit dated September 16, 1990 by [redacted], claiming that she has known the applicant to reside in Van Nuys, California since December 1981. She claims that she met the applicant at church and that they are good friends.

(5) Affidavit dated August 19, 2005 by [redacted]. The affidavit is confusing, for it claims that the applicant resided in the United States, and in the same sentence, claims he resided in Durango, Mexico, from August 1969 to the present. The affiant claims that she has

known the applicant since they were very young, and claims that she came to the United States in 1985 and the applicant was already here.

(6) Affidavit dated August 12, 2005 by [redacted], claiming that he has known the applicant since October 1982. He claims that he is a friend of the family.

(7) Affidavit dated August 12, 2005 by [redacted], claiming that she has known the applicant since February 1980 and that they have been friends for a long time.

(8) Letter dated February 20, 2002 by [redacted], claiming that he has known the applicant since 1981. He claims that the applicant married his sister.

(9) Letter dated February 20, 2002 by [redacted], claiming that she has "known her brother" since 1981. It is unclear whether she refers to the applicant as her sibling or as a friend.

(10) Affidavit dated February 14, 2002 by [redacted] claiming that he has known the applicant from 1985 to the present. No additional information regarding their relationship is provided.

Furthermore, it is noted that in his interview on March 31, 2006, the applicant claimed to have first entered the United States in 1986. Finally, the record contains a Waiver, executed by the applicant on April 25, 2005. In the pertinent part of this document, the applicant states that he entered the United States for the first time in 1982 when he was 14 years old. He claimed he was too young to work at this time and that he lived with his brothers.

In the Notice of Intent to Deny (NOID) dated March 31, 2006, the director noted that the applicant's sworn statement during his interview rendered him ineligible for the benefit sought. The applicant was afforded thirty days to supplement the record with additional evidence of his eligibility. The applicant failed to respond, and subsequently the application was denied on July 3, 2006. On appeal, the applicant contends that he misunderstood the question posed to him during his March 31, 2006 interview.

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 a number of affidavits as evidence to support his Form I-485 application. Here, the applicant has failed to meet this burden.

Each affidavit provided by the applicant contains minimal information, as well as some conflicting information, with regard to the applicant's residence in the United States. The affiants merely state that they know the applicant has resided in the United States, and state the month and year when they first met the applicant. They provide no substantive information, such as the specifics of their relationship with the applicant or their frequency of contact. All affiants merely state the month and year during which the met the applicant, and provide no additional substantive information, such as where the applicant resided, where he worked, or how frequently they were in contact. Without more specific information, the affidavits contained in the record are insufficient to establish the applicant's continuous presence in the United States during the requisite period. Moreover, although the applicant lists four different employers during the relevant period, he submits no verification letters from any of the named employers.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant or how frequently they saw 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.

The applicant further provides contradictory statements with regard to statements submitted to Citizenship and Immigration services (CIS). For example, during his March 31, 2006 interview, the applicant stated under oath that he first entered the United States in 1986. On the waiver he submitted to CIS, which was executed on April 29, 2005, the applicant claims that he first entered the United States in 1982. On Form I-687, the applicant claims that he last entered the United States in November 1981, and made only one trip outside the United States in 1987. On his affidavit for class membership, however, he claims he first entered the United States in November 1980.

These four conflicting statements have not been clarified. It is noted that on appeal, the applicant claims that he did not understand the question posed to him during the March 31, 2006 interview. However, the applicant's question was posed, and his statement was executed, in Spanish, his native language. The AAO, therefore, finds it difficult to believe that the applicant did not understand the question. If CIS fails to believe that a fact stated in the application is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

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.

Beyond the decision of the director, it is noted that the applicant was arrested in El Paso County in the Western District of Texas under the alias [redacted] on September 11, 1997. He was charged with knowingly possessing an identification document, not issued to defendant, with the intent that such document be used to defraud the United States, a misdemeanor, in violation of 18 U.S.C. § 1028(a)(4). On September 22, 1997, the applicant pled guilty and was sentenced to three years probation, and was fined $25.00. (Case No [redacted]).

This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

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