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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 02 278 60033

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.

On appeal, the applicant requests reconsideration of the decision, and claims that due to the passage of time, it has been extremely difficult for him to locate evidence. He further claims that his lack of employment records is due to the fact that he was paid on a cash basis during his employment. In support of the appeal, he provides one additional letter of support.

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 on April 1, 1992, the applicant stated that he first arrived in the United States in October 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 on April 27, 1992, the applicant confirmed that his last entry into the United States was in October 1981. The applicant further claimed to live at [redacted], San Carlos, California 94070 from October 1981 to September 1988. Regarding his employment, the applicant claimed on the same form that he was employed by [redacted] as a gardener from October 1981 to April 1989.

On both forms, the applicant claimed that he departed the United States once during the requisite period for a trip to Mexico in September 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 March 2, 1992 by [redacted], claiming that she has knowledge of the applicant's presence in the United States, and that he returned to Mexico for approximately one month in September 1987 to visit his mother.

(2) Employment verification letter dated April 25, 1992 by [redacted] claiming that the applicant worked for him as a gardener from October 1981 to April 1989 at a rate of $10.00 per day.

(3) Affidavit dated April 27, 1992 by [redacted] claiming that he has known the applicant since 1981. Mr. [redacted] claims that he met the applicant at his uncle's house, and that he has kept in contact with the applicant through his uncle.

(4) Affidavit dated April 25, 1992 by [redacted] claiming that he has known the applicant since 1981, when they worked together for [redacted]

(5) Affidavit of Residency dated March 27, 1002 by [redacted], claiming that the applicant has resided at [redacted] San Carlos, CA from October 1981 to the present. [redacted] listed his own address as [redacted]

In the Notice of Intent to Deny (NOID) dated February 27, 2006, the director noted that the evidence submitted was insufficient. The applicant was afforded thirty days to supplement the record with additional evidence of his eligibility. In a response dated March 23, 2006, the applicant submitted an affidavit from the nephew of one of his landscaping clients. The director found this affidavit to be insufficient to overcome the deficiencies set forth in the NOID, and subsequently the application was denied on June 26, 2006. On appeal, the applicant submit a letter from [redacted] 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 Issac Centeno Maritano dated April 25, 1992 fails to comply with requirements set forth at 8 C.F.R. § 245a.2(d)(3)(i). The letter is not on employer letterhead stationery, and failed to provide the applicant's address at the time of employment. Under the same regulations, The letter 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 as well as some conflicting information. First, the AAO will address the applicant's claim of residence. On his Form I-687, he claims that he resided at [redacted] until September 1988. However, the affidavit by [redacted] executed in 1992, claims that the applicant still resides at [redacted]. 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).

The affidavits of [redacted] and [redacted] are likewise insufficient. These affiants merely state that they know the applicant has resided in the United States. They provide no substantive information, such as the specifics of their relationship with the applicant or their frequency of contact. Ms. [redacted] merely claims that the applicant went to Mexico for one month in 1987, but provides no additional information regarding how she knows this, or how she knows the applicant resided in the United States since before January 1, 1982. The affidavits of [redacted] and [redacted] also omit such information. Merely claiming that they worked together and that they met through a family member, without more specific information, is insufficient to establish the applicant's continuous presence in the United States during the requisite period.

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. 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.

On appeal, the applicant submits a letter dated July 7, 2006 from [redacted] The affiant claims that the applicant first came to the United States in October 1981 and thereafter worked in landscaping. The affiant further claims that the applicant was paid in cash, and claims to know this because they were close

friends and saw each other frequently during this period. These unsupported statements, which are not notarized, are insufficient to overcome the basis for the director's denial.

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. The record contains the applicant's marriage certificate, which indicates that he married his wife in Mexico on December 11, 1985. However, 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 September 1987. Clearly, the applicant must have been present in Mexico in 1985 according to the marriage certificate. Furthermore, his son was born on September 20, 1986 in Mexico, thereby further supporting the fact that the applicant was in Mexico in 1985 and possible 1986. As previously stated, 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. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

It appears, therefore, that the applicant has an undisclosed trip outside of the United States in 1985. Although Form I-687 specifically required the applicant to disclose all trips outside of the United States during the requisite period, the applicant failed and/or refused to disclose this trip. Since the duration of his absence is unknown, the AAO must conclude that the absence was not a casual absence for purposes of this appeal. According to the regulation at 8 C.F.R. § 245a.15(c)(1), no single absence from the United States can exceed forty-five days without interrupting continuous residency. Since there is insufficient evidence to determine the length of his absence, and documentary evidence exists to show that he was present in Mexico for an unknown duration in 1985, the AAO must conclude that continuous residency during the requisite period has not been established.

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.