U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: HOUSTON Date: MAR 27 2006
MSC 03 247 63927

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 [or Records] 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.

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, Houston, Texas, 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 had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts the applicant explained the discrepancy between his statements made in 1995 and at the time of his interview in 2004. Counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides copies of previously submitted documents 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 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 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 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. Here, the applicant has failed to meet this burden.

At the time of his LIFE interview, the applicant was placed under oath and admitted in a sworn statement that he first entered the United States in December 1981 and that he had never returned to Mexico. The applicant indicated that he attended school in the United States, but the school records were destroyed in an apartment fire.

However, on a Form to Determine Class Membership signed by the applicant's mother on November 9, 1995, his mother indicated that the applicant first entered the United States in 1983, departed the United States in 1984 to Mexico and returned in 1989.

The director issued a Notice of Intent to deny dated August 2, 2004, which informed the applicant that his testimony was at variance with the information provided by his mother, thereby casting credibility issues on his claim to have continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988. In response, the applicant asserted, in pertinent part:

> The truth is that for the lack of resources, my parents did not have the money to pay an applicable person to fill our application, and represented by. When we first intended to apply, my parents ask a friend that could barely understand the language to fill the application for them that is the reason the forms were not filled out with proper information. The last time we tried we went to appropriate personnel and we presented all of our paper work and evidence of our family being in the United States from 1981 till present. I know that it may seem unreal about the fire that we encounter but it is true we lost a lot of stuff and records of our childhood. We went to the Elementary that we attended and they don't have archives that far back.

The applicant submitted an affidavit from [redacted] of Waller, Texas, who indicated that she first met the applicant at her sister's home and has been acquainted with the applicant since 1981.

The applicant also submitted an affidavit from [redacted], of Houston, Texas, who indicated that he first met the applicant at the home of [redacted] in 1981, and attested to the applicant's residence in the United States since May 1981. The affiant asserted that he has been a friend of the applicant's brother for approximately 23 years and has visited the applicant's family at various times. The affiant indicated he has remained in close contact with the applicant's family.

The director, in considering the applicant's response, determined that the applicant had failed to meet his burden of proof in establishing continuous residence in the United States during the requisite period and denied the application on September 29, 2004.

On appeal, counsel provides an affidavit from who indicated that she is a friend of the applicant's mother and attested to the applicant's presence in the United States since December 1981.

The statements of counsel and the applicant regarding the amount and sufficiency of the applicant's evidence of residence, and the applicant's inability to produce additional evidence of residence for the period in question have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States during the requisite period as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. [redacted] attested to the applicant's residence in the United States since May 1981. However, the affiant does not explain how the applicant could have been residing in the United States during that period when he was born on August 26, 1981. As such, the affidavit has no probative value or evidentiary weight. It is noted counsel provided a photocopy of this affidavit on appeal, however, it must be noted that the affiant's address has been omitted.

2. [redacted] and [redacted] attested to the applicant's presence in the United States since 1981, but no attestation to the applicant's actual residence in the United States were indicated, and the affiants provided no details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence. It is noted counsel provided a photocopy of [redacted] affidavit on appeal, however, it must be noted that the affiant's address has been omitted.

3. The applicant claims that the elementary school he attended did not maintain archives that far back and that all other supporting documents were destroyed in an apartment fire. The applicant, however, has provided neither a fire report nor evidence from the elementary school to corroborate his assertions. Simply 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)). The applicant could have requested his school transcripts from either the school district or the state in which he allegedly attended school.

4. As conflicting statements have been provided, it is reasonable to expect an explanation from the applicant's mother in order to resolve the contradictions. However, no statement from the applicant's mother has been submitted to resolve the contradicting information or to corroborate the applicant's statement submitted in response to the Notice of Intent to Deny. The fact that the statement provided in response to the Notice of Intent to Deny was unsigned and written in the first person it cannot be concluded that it was written by the applicant's mother. It is noted that it is *not* the Form I-687 application that was prepared by a friend on June 1, 1993, that is in question. Rather it is the Form to Determine Class Membership signed by the applicant's mother dated two years after the Form I-687 application was prepared that undermines the applicant's claim to have continuously resided in the United States during the requisite period.

These factors tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation, absence of a plausible explanation, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.