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

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[redacted]

FILE: [redacted] Office: SAN DIEGO Date: MAR 28 2008

MSC 02 246 64082

IN RE: Applicant: [redacted]

PETITION: 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.

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 in San Diego, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application on the ground that the applicant failed to respond to a request for evidence to establish his continuous residence and physical presence in the United States from 1981 to 1988.

On appeal, the applicant asserts that he never received any correspondence from the district office or from his attorney regarding his application. The applicant indicated that he would be pleased to submit additional documentation.

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 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 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).

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 Mexico, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 3, 2002.

In a Notice of Intent to Deny (NOID), dated February 17, 2005, the district director referred to the applicant's interview for LIFE legalization on December 2, 2004, at which he was requested to submit evidence within the next 12 weeks of his continuous residence and physical presence in the United States from 1981 through 1988. The district director noted that the applicant had not yet responded to the NOID, and that an earlier application filed on July 31, 1991 for class membership in the class action lawsuit filed by Catholic Social Services [1] had been denied on the ground that the applicant had submitted fraudulent rent receipts as evidence of his residence and physical presence in the United States. The applicant was granted 30 days to submit additional evidence in support of his application for legalization under the LIFE Act. No response was received from the applicant.

On January 24, 2006, the district director denied the application on the ground that the applicant did not submit the requested documentation and therefore had failed to overcome the grounds for denial set forth in the NOID.

The applicant filed a timely appeal, in which he asserts that "[t]o my knowledge I never received any correspondence regarding my case" from either the district office or his attorney. The applicant states that he would have complied with any request to submit additional documents.

The AAO notes that both the NOID and the Notice of Decision were sent to the applicant and his attorney. While the applicant's zip code on both documents was misidentified as 92101 instead of 92102, the attorney's address was correct on both documents. Thus, even if the applicant did not receive the NOID and the decision directly from the district office, due to the zip code error, he should have through his attorney. The fact that the applicant's appeal was timely filed shows that he did receive the district director's decision, either directly or through his attorney, and there is no reason to conclude that he and/or his attorney did not also receive the NOID in a timely manner.

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[1] *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

Accordingly, the applicant's failure to respond to the NOID, as well as the prior request for evidence at his LIFE legalization interview, will not be excused.

The AAO concludes, therefore, that the applicant has still not submitted credible documentary evidence 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 section 1104 of 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.