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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MILWAUKEE, WISCONSIN Date: MAY 14 2008

MSC 03 220 61375

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. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the Acting District Director (director), Milwaukee, Wisconsin, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director also indicated that the applicant failed to provide sufficient, credible evidence that he was continuously present in the United States during the statutory period beginning on November 6, 1986 and ending on May 4, 1988.

On appeal, the applicant asserted that he did maintain continuous unlawful residence and physical presence in the United States during the statutory periods.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

> (i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

See also 8 C.F.R. § 245a.11(b).

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 states 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 petitioner 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 petitioner 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 or petition.

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 AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.[1]

Here, the submitted evidence is not relevant, probative and credible.

The record indicates that on or near October 4, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On May 8, 2003, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains several statements and affidavits relating to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. The record also contains the Form I-213, Record of Deportable Alien, on which a Border Patrol Agent recorded her May 10, 1995 interview of the applicant. During this interview, the applicant stated that he first entered the United States during July 1984.

There is no contemporaneous evidence in the record directly relevant to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through July 1, 1984. There is a copy of a Wilmington, California video store membership card. It bears the applicant's name and an August 16, 1982 date of issuance. However, the year of issuance appears to have been modified subsequent to the issuance of the card. There is also a copy of a hand-written receipt from a coffee shop in Long Beach, California that is not dated and which does not bear the applicant's name. The applicant indicated that he included this coffee shop receipt as contemporaneous evidence of his presence in the United States during 1983. This office finds that these two documents are not relevant, probative evidence of the applicant's residence in the United States during 1982 and 1983.

On February 26, 2006, the director issued a Notice of Intent to Deny (NOID) which indicated that the applicant had failed to demonstrate continuous residence in the United States during the statutory period. In the NOID, the director stated that he intended to deny the application because, according to the Form I-213 in the record, the applicant told a Border Patrol Agent on May 11, 1995 that he first entered the United States in

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

July 1984. Thus, the director concluded that the applicant had not resided continuously in the United States throughout the statutory period.

The applicant did not submit a rebuttal to the NOID. On March 22, 2006, the director denied the application based on the reasons set out in the NOID.

On the appeal form, the applicant indicated that he would file a brief or additional evidence within 30 days. To date, Citizenship and Immigration Services (CIS) has not received any additional evidence or brief. Thus, the AAO will base this decision on the evidence of record.

On appeal, the applicant asserted that he did reside continuously in the United States during the statutory period. He indicated that he told the Border Patrol Agent on May 11, 1995 that he first began working in the United States during 1984, not that he first began residing in the United States in 1984.

The applicant's assertions are not sufficient to overcome inconsistencies in the record. The Form I-213 states that the applicant told the Border Patrol Agent that he first entered the United States in 1984 in contradiction to the claims made elsewhere in the record that the applicant resided continuously in the United States throughout the statutory period.

These discrepancies cast serious doubt on all the evidence in the record. This in turn casts serious doubt on the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States during the statutory period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 applicant failed to provide contemporaneous evidence that might be considered independent, objective evidence of his having resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

This office also finds that the various statements and affidavits in the record which purport to substantiate the applicant's continuous residence in the United States beginning on a date prior to January 1, 1982 are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States in an unlawful status throughout the entire statutory period.

Finally, the AAO notes that according to a Federal Bureau of Investigation report in the record, on December 18, 1988, the applicant was charged with taking a vehicle without the owner's consent and with presenting false identification to peace officers. Both charges were dismissed. On October 24, 1989, the applicant was charged with alien smuggling. Prosecutors declined to go forward on these charges. Dismissed charges do not affect the applicant's eligibility for the benefit sought in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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