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

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: LOS ANGELES Date: MAY 23 2008

MSC 02 138 61028

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. 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, California, 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 from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement. At the time of filing the appeal, on April 21, 2004, counsel indicated that she needed 30 days in which to submit a brief and/or additional evidence in support of the appeal - once she had received a copy of the record of proceedings. The record reflects that a copy of the record of proceedings was provided to counsel on March 2, 2006 [redacted] relates). Counsel has submitted no additional brief and/or evidence in support of the appeal since that date; therefore, the record will be considered complete.

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 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.

On February 15, 2002, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, under section 1104 of the LIFE Act.

In a Notice of Intent to Deny (NOID), dated February 17, 2004, the district director determined that the applicant had failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The district director specifically noted that the applicant had indicated at an interview on July 22, 1992, at Los Angeles International Airport, that his initial entry into the United States was in 1986 at Tijuana, Mexico. The district director afforded the applicant 30 days to explain discrepancies in the record or rebut any adverse information.

In response to the NOID, counsel submitted a brief concluding that the applicant had met his burden of proof, by a preponderance of the evidence, through his applications, oral testimony, and documentary evidence.[1]

In a Notice of Decision (NOD), dated April 6, 2004, the district director denied the application based on the reasons stated in the NOID. Counsel filed a timely appeal from that decision on April 21, 2004. On appeal, counsel again contends that the applicant has met his burden of proof, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in continuous unlawful status since that date through May 4, 1988.

The issue in this proceeding is whether the applicant has furnished sufficient evidence to demonstrate that he continuously resided in the United States in an unlawful status before January 1, 1982, through May 4, 1988.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's past employment should be on employer letterhead stationery, if the employer has such stationery, and 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.

[1] The complete brief is contained in the record of proceedings.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), dictates that attestations from churches should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the member ship period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

While affidavits "may" be accepted (as "other relevant documentation') [*See* 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's unlawful continuous residence during the requisite time period.

A review of the record reflects that the applicant has provided sufficient documentation to establish his unlawful presence in the United States since 1986. However, there is insufficient evidence to establish that he continuously resided in the United States in an unlawful status before January 1, 1982, through December 1985. With regard to the time period prior to 1986, the applicant provided the following documentation:

1. **An affidavit, dated May 16, 1990, from** [redacted] stating that the applicant worked for her from January 1982 to September 1984 as a gardener and was paid $90 **per week in cash. A second affidavit, dated May 21, 1990, from** [redacted], states that the applicant was "a friend, he was renting a room and he was paid $175.00 per month." This employment letter does not comply with the requirements set forth in the regulation at 8 C.F.R. § 245a.2(d)(3)(i)

2. An affidavit, dated May 16, 1990, from [redacted], stating that the applicant worked for him from October 1984 to December 1987 in construction, and was paid $180.00 per week in cash. This employment letter also does not comply with the requirements set forth in the regulation at 8 C.F.R. § 245a.2(d)(3)(i)

3. An affidavit, dated May 21, 1990, from [redacted] stating he met the applicant through a friend and has personal knowledge that the applicant had resided in the United States since January 1982. While not required, the affidavit is not accompanied by proof of the affiant's identification. It also lacks details as to the affiant's relationship with the applicant, how he dates his acquaintance with the applicant, or how often and under what circumstances he had contact with the applicant during the requisite period. It is unclear on what basis the affiant claims to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, the statement can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

4. A letter, dated May 12, 1990, from [redacted], O.M.I., of the Holy Family Church in Wilmington, California, stating that the applicant had been a member of the church since January 1982.

5. A generic receipt with the applicant's name and date (March 10, 1983) handwritten thereon. The receipt has no probative value as it does not indicate by whom it was issued (other than "[redacted]" handwritten at the top) or the address of the business that issued it.

Although the applicant has submitted affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite time period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

It is concluded that the applicant has failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982, 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.

It is noted that an Immigration Judge in Los Angeles, California, ordered the applicant excluded from the United States on September 1, 1992.

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