U.S. Department of Homeland Security
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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 02 064 64264

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 District Director, Los Angeles, California, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding that the applicant failed to submit sufficient credible evidence that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status since that date through May 4, 1998.

On appeal, the applicant asserts that the director did not adequately consider all of the evidence submitted.

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).

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 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 record reflects than on December 3, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On August 4, 2003, the applicant appeared for an interview based on his application.

On April 8, 2006, the director sent the applicant a Notice of Intent to Deny (NOID). The director stated that the applicant failed to submit sufficient credible evidence that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status since that date through May 4, 1998. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

In response, the applicant submitted affidavits from individuals who knew him.

On May 25, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, the applicant asserts that the director did not adequately consider all of the evidence submitted by the applicant.

The applicant submitted letters of employment and affidavits to support his Form I-485 application. Some of the evidence submitted is either undated or indicates that the applicant resided in the United States after his entry without inspection on November 18, 1987 and is not probative of residence before that date. The following evidence relates to the requisite period and was previously submitted with the applicant's Form I-687, Application as a Temporary Resident, under the 1986 Legalization program:

Employment Letters

- The applicant submitted an October 26, 1990, letter from [redacted], director of [redacted] Landscape. [redacted] stated that the applicant worked for the company from January 1981, to December 1982, as a gardener. [redacted] stated that the applicant was paid in cash and that no record of earnings or W-2's exist for this time period.

- The applicant submitted a letter from [redacted] dated August 23, 1991. [redacted] stated that the applicant worked as a general laborer from January 10, 1983, to the date the letter was written. [redacted] stated that that the applicant was paid in cash and no record of earnings or W-2's exist for this time period.

The employment letters can be given little evidentiary weight as they lack sufficient detail. Specifically, the employers failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employers also failed to declare whether the information was taken from company records, and identify the location of such company records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable. The employers did not identify any periods of layoff and did not list the applicant's duties with the companies in any detail.

Affidavits

- An affidavit from [redacted], the applicant's former landlord. Mr. [redacted] stated that the applicant lived in his rental unit from January 1981, to December 1988;

- A fill-in-the-blank affidavit from [redacted], the applicant's friend. [redacted] stated that he met the applicant at church in 1981 and that they had seen each other on a regular basis; and,

- An affidavit from [redacted] the applicant's friend. [redacted] stated that he met the applicant at church in 1981 and that they had seen each other on a regular basis.

These affidavits are of little probative value and can be given little evidentiary weight, as they are not sufficiently detailed. [redacted] and [redacted] did not state the address where the applicant lived during that time period or provide any details about that time period. [redacted] did not provide records to establish that the applicant had lived in his rental unit for seven years or explain the absence of those records. On appeal, the applicant submits three, handwritten rent receipts from [redacted], dated in 1980. This contradicts an affidavit from Ms.

already in the record, stating that the applicant lived in her rental unit from January 1989, to July 1991. It is incumbent upon the applicant 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). As the applicant has not explained this inconsistency, receipts can be given little, if no evidentiary weight.

The record of proceedings contains various other documents, including the baptism certificate of the applicant's child, [redacted], indicating that she was baptized in Santa Ana, California, on May 8, 1989; the birth certificate of the applicant's child, [redacted], indicating that she was born in Orange County, California, on January 2, 1991; a residential lease dated August 29, 1997; an affidavit from [redacted], attesting that she rented a unit to the applicant from January 1989, to July 1991; and, a 1992 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

Although the applicant has submitted numerous 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 period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States in December 22, 1987, near San Isidro, California, and to have resided for the duration of the requisite period in California. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

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.