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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: OCT 0 3 2008

MSC 02 235 62126

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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office 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 since before January 1, 1982 through May 4, 1988. The director noted an inconsistency in the applicant's testimony and application.

On appeal the applicant asks that CIS reconsider his application.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 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).

An applicant must establish eligibility by a preponderance of the evidence. 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 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.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant

document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On December 15, 2006, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant submitted a 16 page written response to the NOID.

On January 29, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal the applicant asks that CIS reconsider his application.

Much of the evidence contained in the record covers a period after the required period, and is not relevant to these proceedings. Relevant to the period in question the record contains the following evidence:

(1) Letter, signed by [redacted] asserting the applicant worked on her husbands farm for a period from November 1981 to December 1987.
(2) Marriage certificate for [redacted] and [redacted] indicating a marriage date of August 1989.
(3) Copy of the death certificate for [redacted]
(4) Copy of a letter signed by [redacted] asserting the applicant lived in New London, California from December 1981 to December 1987.
(5) Copy of a letter signed by [redacted] asserting the applicant worked for him on his farm from November 1981 to December 1983, after which time he was employed by the affiant's daughter.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. In this case the documents provide list inconsistent areas of residence for the applicant, are generic in nature and fail to fully explain how the affiants came to know the applicant and what the nature of the relationships were. In the affidavit listed at No. 4 above, the affiant testifies that he knew of the applicant's residence in New London in December 1981, but fails to explain how he came to know such information, or in what context the information was recalled (either by business records, conversations, etc.). This letter does not meet the criteria for a letter of reference from a church. 8 C.F.R. 245a.2(d)(3)(v). Further, this letter is inconsistent with the applicant's assertions that he lived in

Dinuba, California during that time. The documents and affidavits submitted are internally inconsistent, generic in nature, and lack credibility.

Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner 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. *Id.*

While the applicant's written response makes extensive use of legalese, it does not change the fact that the record of proceeding contains very little evidence, and the evidence that is submitted lacks sufficient credibility and is not sufficiently probative to warrant significant weight. Many of the applicant's assertions take CIS regulations and case law out of context, and fail to sufficiently address the inconsistencies noted between his submitted evidence, oral testimony and legalization applications.

The applicant asserts his rights were denied by not being allowed to have an interpreter. The applicant was interviewed by an agent of CIS in Spanish, and the applicant signed an attestation that he wanted to proceed with the interview despite the absence of his lawyer. The Federal Register release cited by the applicant does not stand for the proposition that he must have his own interpreter present during an interview. The interviewing agent found the applicant's testimony was inconsistent and lacked credibility.

The applicant asserts CIS cannot expect him to produce an I-94 to document his entry into the United States prior to January 1, 1982. CIS did not require the applicant to provide an I-94 to establish his entry. The applicant has failed to provide any primary evidence listed in the regulations to establish his entry and subsequent continuous unlawful residence. CIS has noted that the applicant's testimony and evidence is inconsistent, and when viewed in its totality the lack of primary evidence undermines the applicant's assertions of eligibility. Reference to an I-94 by CIS is merely an example of the type of evidence which can factually establish entry into the United States and is provided by the seminal case regarding the preponderance of the evidence standard.

The applicant asserts that the affidavits in his file are truthful, that CIS did not meaningfully analyze the evidence in his record and that failing to allow him an interpreter prevented him from correcting an inconsistency in his claimed entry date into the United States. However, the director did a thorough analysis of the record and noted inconsistencies in the record which undermined the credibility of the applicant's assertions. An applicant is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case the evidence submitted by the applicant has not clearly resolved the inconsistencies in his assertions. The applicant has not submitted any primary evidence, the record consists entirely of affidavits, and these affidavits are not sufficient to resolve the inconsistencies in the applicant's own testimony. Nor are these affidavits sufficiently probative to establish the manner and date of his entry into the United States and his continuous unlawful residence during the required period thereafter.

The applicant asserts that the inconsistency in the employment affidavit by [redacted] was a mistake, and that the inconsistency in a corrective affidavit submitted by [redacted] wife was a mistake.

As noted by the director the employment affidavit submitted by asserts that the applicant worked for him from 1981 through 1983. The applicant has asserted that he worked for [redacted] from 1981 – 1987, and that he lived on [redacted] ranch and was paid in cash and therefore cannot provide any contemporaneous evidence of his presence during the required period. The director contrasts the applicant's assertions with the applicant's own submissions that he had two children born in Mexico in 1984 and 1989. The applicant responds that he did not travel back to Mexico, and that the fact that he had two children born in Mexico during this time is not relevant because it was not him having the children. The letter purporting to be from the widow of [redacted] is not sufficiently supported by details within the letter to indicate that she had actual knowledge of the applicant's presence. It is unclear, for instance, when this person was married to the applicant's former employer, what role she had in managing the affairs of the business, or how she would come to have knowledge of the applicant's work. It does not meet the standards laid out by regulations for a letter of employment. 8 C.F.R. 245a.2(d)(3)(i); 8 C.F.R. 245a.15(b). This corrective letter does little to rehabilitate the inconsistency noted by the director.

The AAO finds that the applicant's answers are insufficient to clarify the noted inconsistencies **and questionable factual assertions.** It is noted that the applicant's wife has submitted an affidavit and asserts that she resided with him in the United States during this period, despite the fact that she had two children in Mexico. This affidavit only further complicates CIS's attempt to ascertain the truth concerning the applicant's presence in the United States. [redacted] letter and that of [redacted] are rejected as credible evidence and will not be given any weight in these proceedings. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The applicant asserts that the service incorrectly interpreted *Matter of E-M-* , supra. *Matter of E-M-* does not stand for the proposition that affidavits alone are sufficient to establish eligibility, but elaborates on the "Preponderance of the Evidence" burden of proof. Thus, it is necessary to reference the facts of that case evaluating whether or not an individual application has satisfied its burden of proof. The director did not require that the applicant show his I-94 or passport to establish eligibility, but correctly compared this application to the guiding authority on the applicant's burden of proof. In *Matter of E-M-* the applicant established his entry by providing a copy of his I-94, a document issued by CIS. This is a significant distinction from the applicant's case in which he relied solely on affidavits to establish his entry and subsequent continuous unlawful residence. As noted above, the director articulated a material doubt by pointing out that the record contains significant inconsistencies that shed doubt on the veracity of the applicant's assertions. When viewed in its totality the evidence submitted does not resolve the noted inconsistencies and does not support that the applicant is eligible.

The director noted that the applicant was unable to establish his continuous presence in the United States pursuant to 8 C.F.R. 245a.16 requiring official correspondence. The applicant concludes that he has established his continuous presence with the submitted evidence.

The applicant has not provided any official correspondence verifying his presence from November 6, 1986, through May 4, 1988. The bulk of the applicant's evidence covers a period after year 1990, and the AAO finds it likely, given the birth of the applicant's children in Mexico in 1984 and 1989, that the applicant was not yet present in the United States.

The applicant quotes several internal CIS memos and asserts that he has satisfied the policy established by these memos. The quotations are out of context and incorrectly applied such that they have no legal merit. The memos cited by the applicant are not a recognized source of law, predate the LIFE Act and subsequent changes in regulation, and do not supplant the standards proscribed by statute and regulation. Further, as noted several times above, the applicant's testimony and evidence contain significant inconsistencies raising material doubts about the applicant's veracity, and would not satisfy the internal policies referenced even if they were relevant. When viewed in its totality, the evidence in the record does not resolve the noted inconsistencies and does not establish that the applicant is eligible for LIFE Act legalization.

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

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