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: NEW YORK CITY Date: OCT 27 2008

MSC 02 142 60313

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.

John F. Vaughan
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 director in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel submits additional documentation in support of the applicant's claim that he entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: "An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed." (Emphases added.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." (Emphasis added.) 8 C.F.R. § 245a.16(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 its 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 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, who was born in El Salvador on April 22, 1969 and claims to have lived in the United States since April 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on February 19, 2002. At that time the record included the following documentary evidence of the applicant's residence in the United States during the years 1981-1988:

> A letter of employment and an affidavit from in Cedarhurst, Long Island, New York, dated September 25, 1989, and May 2, 1990, respectively, stating that the applicant had been continually employed by him at [redacted] since May 15, 1983, and that the applicant requested a leave of absence in September 1987, for one month, to travel with his father to El Salvador for family reasons.
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> An affidavit from [redacted], a resident of Far Rockaway, New York, dated April 24, 1990, stating that the applicant is his brother, and that they had resided together at [redacted], Far Rockaway, from April 1981 to April 1990.
>
> Affidavits from [redacted], a resident of Far Rockaway, dated December 4, 1989, from [redacted], residence unstated, dated November 7, 1989, and from

a resident of Bronx, New York, dated December 12, 1989, all stating that they have known the applicant since 1981.

- Seven airmail letter envelopes from individuals in El Salvador, addressed to the applicant at [redacted], Far Rockaway, New York, with postmark dates from 1984 to 1986.

  A postcard from the Board of Education, City of New York, Report of Absence, Far Rockaway High School, addressed to the applicant, in care of [redacted], at [redacted] Far Rockaway, New York, indicating that his child was absent from school during the week of January 5 – January 9, 1987.

- Seven letter envelopes from Far Rockaway High School, addressed to Luis Alvarez at [redacted] Far Rockaway, New York, some with the applicant's name below the address, with postmark dates from 1986 to 1988.

In a Notice of Intent to Deny (NOID), dated April 26, 2007, the director indicated that the applicant had not provided sufficient evidence to establish that he resided continuously in the United States from before January 1, 1982, through May 4, 1988. The director noted that of the five affidavits submitted by the applicant, only one placed him in the United States before January 1, 1982, and there was no proof that any of the affiants had personal knowledge of the events and circumstances of the applicant's residence. The director also noted that the letter envelopes addressed to the applicant had postmark dates from 1984 onwards. The director indicated that the fact that the applicant did not enter school until 1984, and evidently started with high school after having had no schooling since age 11, was not credible. The applicant was given 30 days to submit additional evidence.

The applicant failed to submit a response to the NOID and on June 25, 2007, the director issued a Notice of Decision denying the application based on the reasons stated in the NOID. The applicant filed a timely appeal and submitted the following additional documentation:

- Affidavits from [redacted] and [redacted], residents of Inwood, New York, [redacted] and [redacted], residents of Far Rockaway, New York, and [redacted], a resident of Oyster Bay, New York, all dated July 23, 2007, stating that they have known the applicant for twenty six (26) years, and that the applicant entered the United States in 1981.

  An affidavit from a resident of Far Rockaway, New York, dated July 23, 2007, stating that he had known the applicant since the applicant was born, and that the applicant entered the United States in 1981.

- An affidavit from [redacted], a resident of Far Rockaway, New York, dated July 15, 2007, stating that he is the applicant's father, that the applicant entered the United States in 1981, that he did not enroll the applicant in school until 1984, when he enrolled him in Far Rockaway High school, because he was afraid that the applicant would be deported if he enrolled him earlier in school.

  A copy of a Certificate of Baptism from Church of St. Mary Star of the Sea in Far Rockaway, New York, dated February 11, 2004, indicating that the applicant was baptized in the church on May 30, 1986.

The AAO maintains plenary power to review each appeal 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 AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The employment letter from of [redacted], dated September 25, 1989, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the letter does not provide the applicant's address at the time of employment, does not describe the applicant's duties, does not indicate whether the information was taken from company records, and does not indicate whether such records are available for review. In addition, [redacted] neglected to describe the nature of his business. Nor was the letter supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. In addition, [redacted] does not provide any information about the applicant prior to May 15, 1983.

For the reasons discussed above, the AAO determines that the employment letter has limited probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits in the record – dating from 1989, 1990 and 2007 – from acquaintances who claim to have resided with or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in every case since 1981 – the affiants provide remarkably little information about his life in the United States and their interaction with him over the years. Only one of the authors provided information about where the applicant resided during the 1980s, and none of them provided information about what sort of work he did. Nor

are the affidavits accompanied by documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Of the seven letter envelopes addressed to the applicant at [redacted] Far Rockaway, New York, from individuals in El Salvador, one envelope has an illegible postmark date, two envelopes have postmark dates in 1984, two envelopes have postmark dates in 1985, and one envelope has a postmark date in 1986. One envelope with a postmark date of June 21, 1984, is clearly fraudulent because the 20c stamp of San Vincente de Austria Y Lorenza City, 350th Anniversary, was part of a series issued by the government of El Salvador in December 1985. *See* Scott 2006 Standard Postage Stamp Catalogue, Vol. 5, p. 873. Additionally, it is not credible that the letter envelope with a postmark date of June 21, 1984, from El Salvador was also postmarked as received in Far Rockaway on June 11, 1986 – two years after it was supposedly mailed. Even if the AAO accepted the other envelopes as credible evidence of the applicant's residence in the United States from 1984 through 1986, they would not be sufficient to establish the applicant's continuous residence in the United States before 1984, much less before January 1, 1982, as required for legalization under the LIFE Act.

The letter envelopes from Far Rockaway High School, addressed to with postmark dates in 1986, 1987, and 1988, have little probative value as evidence of the applicant's continuous residence in the United States during those years because they were not specifically addressed to the applicant. Nor were the envelopes accompanied by official school records that identified the applicant, and/or relate to the applicant's attendance at the school. Even if the AAO accepted the envelopes as credible evidence of the applicant's residence in the United States from 1986 through 1988, they would not be sufficient to establish the applicant's continuous residence in the United States before 1986, much less before January 1, 1982, as required for legalization under the LIFE Act.

The postcard "Report of Absences" from Far Rockaway High School was addressed to the applicant in care of his father – [redacted] – indicating that "your child was absent from school one or more times . . . during the week of 1/5 – 1/19/87." The postcard was not completed as specified by [redacted], who failed to write the reasons for his son's absence and sign the card. Even if the AAO accepted the postcard as evidence of the applicant's residence in the country in 1987, it does not indicate that the applicant's continuous residence in the United States began before January 1, 1982. Thus, the postcard has very limited probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Finally, while the copy of a Certificate of Baptism from Church of St, Mary Star of the Sea, indicating that the applicant was baptized in the church on May 30, 1986, may indicate that the

applicant was in the United States during that year, it does not establish that the applicant resided in the country for all of 1986, much less in the years before that. Thus, the copy of the Certificate of Baptism has limited probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and 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 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.