U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

L 2

[redacted]

FILE: [redacted] Office: FRESNO Date: APR 14 2009

MSC 03 161 63045

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. Grissom
Acting 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 Fresno, California. 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 his continuous unlawful residence and continuous physical presence in the United States during the requisite periods for legalization under the LIFE Act.

On appeal counsel asserts that the director improperly analyzed the evidence of record, and that the documentation submitted by the applicant establishes his continuous unlawful residence and continuous physical presence in the United States during the requisite periods for LIFE legalization.

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, a native of India who claims to have lived in the United States since early 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on March 10, 2003. He was subsequently interviewed on September 14, 2006.

On October 3, 2006, the director issued a Notice of Intent to Deny (NOID), citing inconsistencies between the applicant's testimony at his interview for LIFE legalization and the documentation on file concerning the date, location, and circumstances of his initial entry into the United States, and where he was employed during the early 1980s, as well as the apparent inauthenticity of a rental application dated in 1981. The applicant was granted 30 days to submit a rebuttal.

In response to the NOID counsel offered explanations for the evidentiary inconsistencies and shortcomings cited by the director, and submitted some additional documentation including photocopied rental receipts dated in 1984, 1985, and 1986.

On March 28, 2008, the director issued a Notice of Decision denying the application. The director indicated that various evidentiary inconsistencies were still unresolved, that the rental receipts (like the previously submitted rental application) did not appear to be genuine, and that

the applicant had not overcome the grounds for denial as discussed in the NOID. The director concluded that the record failed to establish the applicant's continuous unlawful residence and continuous physical presence in the United States during the requisite periods for legalization under the LIFE Act.

On appeal, counsel reiterates the applicant's claims with regard to how and when he initially entered the United States, his employment in the early 1980s, and the authenticity of photocopied rental agreements dated in the mid-1980s. Some additional documentation is also submitted.

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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and that he was continuously physically present in the country from November 6, 1986 through May 4, 1988. The AAO determines that he has not.

As evidence of his residence and physical presence in the United States during the requisite periods of the 1980s, the applicant has submitted the following documentation:

- An affidavit by a resident of Hollywood, California, dated March 28, 1990, stating that he knew the applicant resided at [redacted] in Reseda, California, from May 6, 1980 to November 10, 1989 (and thereafter at an address in Canoga Park, California), that he met the applicant at a basketball stadium, and that he saw him on weekends in clubs.

  A photocopied "Rental Application" by the applicant, dated July 8, 1981, which identified the applicant's current address as [redacted], in Canoga Park, California.

- Three photocopied receipts – dated 05.19.1984, 01.02.1985, and 12.01.1986 – for rental payments by the applicant, each in the amount of $460, for an address identified only as "[redacted]" without a street name.

- A letter from [redacted], who identified himself as the supervisor of [redacted] in Tehachapi, California, dated March 3, 2004, stating that the applicant was employed from April 1981 to December 1983 as a field laborer in the apple orchards, and that he resided at the ranch free of charge during that time.

Another letter from [redacted] (who signed as [redacted]), dated October 26, 2006, stating that when he was the foreman of [redacted] he remembers that he worked with the applicant from April 1981 to December 1983. [redacted] indicated that the business was no longer in operation and he did not know of any records in existence.

Another declaration by [redacted] dated April 23, 2008, stating once again that he worked for [redacted], owned by [redacted] who ceased harvesting apples in the mid-1980s and set up a new business called [redacted] Inc. to sell sod. [redacted] states that he worked continuously for the two businesses from November 1981 until September 17, 2004, when he purchased [redacted]. Mr. [redacted] reiterated his belief that there are no business records of [redacted] dating from the 1980s with regard to seasonal employees because labor contractors were used to obtain such workers.

The first three items listed above are all internally inconsistent. While [redacted] stated in his 1990 affidavit that the applicant resided at [redacted] in Reseda, California, from 1980 to 1989, the rental application of 1981 identified the applicant's current address as [redacted] in Canoga Park and the rental receipts of 1984-1986 identified the applicant's address as a number ([redacted] without any street.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

In addition to the glaring evidentiary discrepancies with regard to the applicant's address during the 1980s, neither the rental application nor the rental receipts bear any indicia of authenticity, such as a notarial stamp or other official mark showing that they actually date from the 1980s. Furthermore, [redacted] affidavit is short on details, provides almost no information about the applicant's life in the United States during the 1980s, and is not supplemented by any evidence – such as photographs, letters, or other documentation – of his personal relationship with the applicant. For the reasons discussed above, the affidavit, rental application, and rental receipts have no probative value as evidence of the applicant's residence and physical presence in the United States during the 1980s.

As for the letters from [redacted] dating from 2004 to 2008, they allege that the applicant was a seasonal farm laborer at an apple orchard/ranch in Tehachapi, California, during the years 1981 to 1983. Aside from the fact that no corroborating documentation has been submitted, the seasonal nature of the alleged employment would indicate that even if the applicant did perform some work during the years indicated, he did not do so year-round and therefore did not live at

the ranch throughout the year. [redacted] does not indicate where the applicant lived when he was not picking apples, and thus cannot attest that the applicant was continuously resident in the United States from 1981 through the end of 1983. Nor does [redacted] provide any information about where the applicant lived after 1983. Moreover, the ranch was located in Tehachapi, California, which does not comport with either of the other two California addresses identified for the applicant during the early 1980s elsewhere in the record – *i.e.*, Reseda (in the [redacted] affidavit) and Canoga Park (on the 1981 rental application). Due to the evidentiary infirmities discussed above, the employment letters from [redacted] have little probative value as evidence of the applicant's continuous residence in the United States during the years 1981 to 1983, and none whatsoever with respect to the applicant's residence in subsequent years up to 1988.

Based on the foregoing analysis – detailing the lack of probative evidence and the inconsistencies in the record – the AAO concludes that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and that he was continuously physically present in the country from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act. Therefore, 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.