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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JAN 05 2005

MSC 02 227 60026

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. 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.

for 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 Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the grounds 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, the applicant asserts that he has submitted sufficient documentation to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status during the requisite period 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 Mexico who was born on July 25, 1972 and claims to have lived in the United States since October 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 15, 2002.

In a Notice of Intent to Deny (NOID), dated August 13, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish his entry into the United States before January 1, 1982, and his continuous unlawful residence in the country from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit rebuttal evidence.

In response to the NOID, the applicant submitted a letter addressing various evidentiary issues noted by the director in the NOID, and reasserted his claim to have resided continuously in the United Sates during the requisite period for legalization under the LIFE Act.

On September 18, 2007, the director issued a decision denying the application for the reasons stated in the NOID.

On appeal the applicant reiterates his claim to have submitted the requisite evidence to establish his eligibility for LIFE legalization. The applicant submits an additional letter and an additional affidavit from acquaintances as evidence of his residence in the United States during the requisite period for legalization under the LIFE Act.

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 documentation submitted by the applicant in support of his claim that he was continuously resident in the United States during the requisite period for LIFE legalization consists of the following:

- A letter of employment from Rainbow Foods in Avalon, California, dated January 15, 1999, stating that the applicant worked for the company in the early 1980s under a different company name.
  Three letters and an affidavit, dated in 1990 and 2007, from individuals who claim to have employed, provided accommodation to, or otherwise known the applicant since the early 1980s.
- Eight merchandise receipts dated from 1981 to 1987.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each one in this decision.

The employment letter from [redacted]. stating that the applicant worked for Rainbow Foods in the early 1980s, under a different company name, does not comport with the regulatory requirements of 8 C.F.R. 245a.2(d)(3)(i) because [redacted] did not provide the applicant's address during the period of employment, did not identify the exact period the applicant worked for the company, did not identify the name of the company at that time, did not describe the applicant's job duties, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letter was not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed by the company. Nor did the letter explain how and in what capacity the company could have employed the applicant in the early 1980s, since he was a minor just nine years of age at the time he claims to have settled in the United States. For the

reasons discussed above, the employment letter has limited probative value. It is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The earliest merchandise receipt submitted by the applicant is dated September 2, 1981, which was prior to the date the applicant claimed to have entered the United States – December 1981. The applicant has not explained how he could have acquired a receipt at "[redacted]s of Catalina" three months before his entry into the United States. 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 without competent objective evidence pointing to where the truth lies. *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 other evidence in the record. *See id.*

All of the merchandise receipts dated from 1981 to 1987 have handwritten notations of the applicant's name with no date stamps or other official markings to verify the dates they were written. Two of the receipts appear to be fraudulent. The receipt from The Sand Box, dated August 1982, was written on a form that was apparently revised in 1989. The original information on the receipt from Catalina Gold Company, dated September 7, 1983, appears to have been erased and the applicant's name inserted. Thus, the receipts have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letter and affidavit from and dated in 2007, who claim to have known the applicant since the early 1980s, provide few details about the applicant's life in the United States, such as where he resided during the 1980s and the nature and frequency of his interaction with them over the years. In fact, the only pertinent information offered by Mr. [redacted] is that he has known the applicant since 1980, and the only pertinent information offered by [redacted] is that the applicant has worked for her off and on since 1982 as a handyman. The letter and affidavit are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the letter and affidavit 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.

As for the letter and affidavit from [redacted], dated in November 1990, he identified himself as the applicant's uncle and claimed to have housed and taken care of the applicant from 1981 to 1987 because the applicant's father could not find a place for them to live when they first arrived in the United States. Given the close familial ties between and the applicant, it is noteworthy that [redacted] did not provide any documentary evidence of their personal relationship during the 1980s and the applicant's presence in the United States during those years – such as photographs, letters, medical records, school records, church records, or

any other materials. Due to this lack of documentary support, and the general lack of credibility of other documentation in the record, the letter and affidavit from [redacted] have limited 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.

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. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act. [1]

The appeal will be dismissed, and the application denied.

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

[1] The AAO also notes that Federal Bureau of Investigation (FBI) records show the applicant was arrested on January 16, 1989 by the Sheriff's Office in Norwalk, California, and charged with petty theft. The record includes a letter from the Judicial Assistant/Clerk of the Superior Court of California, Los Angeles County, dated January 9, 2006, stating that court records show the applicant appeared in the Catalina court in March 1989, pleaded no contest to the charge, paid a fine of $200, and was placed on probation for one year. In any future proceedings before U.S. Citizenship and Immigration Services (USCIS) this conviction must be taken into consideration.