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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: JUN 23 2009

MSC 03 246 60203

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 forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and 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, Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director found that the evidence which the applicant submitted to demonstrate his residence in the United States from a date prior to January 1, 1982 through May 4, 1988 was not sufficient to establish continuous residence. Therefore, the director denied the application.

On appeal, the applicant indicated that the record did include sufficient evidence to establish that he had resided continuously in the United States in an unlawful status throughout the entire statutory period.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.[1]

An applicant for permanent resident status under section 1104 of the LIFE Act 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 through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) and 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).

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 application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-,* 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

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[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

Documentary evidence may be in the format prescribed by U.S. Citizenship and Immigration Services (USCIS) regulations. *See id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. In evaluating the evidence, *Matter of E-M-* also states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. 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 or 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

On or near October 15, 1993, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On June 3, 2003, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The director issued a notice of intent to deny (NOID) in which she indicated that she intended to deny the application because the applicant had not established that he resided continuously in the United States during the statutory period.

In the NOID, the director incorrectly indicated that the applicant failed to reply to the Form I-72, Request for Evidence, in which he was asked to submit records relating to a 1988 arrest. The Form I-72 indicates that the applicant should obtain such records from the relevant court or the California Department of Justice in Sacramento, California. First, the AAO notes that the record does not include evidence to support the director's assertion that the applicant was arrested during 1988. The record does reflect that during the April 26, 2006 LIFE legalization interview the District Adjudications Officer notated on page 3 of the Form I-485 that the applicant had received a ticket during 1988. There is no indication in the record as to whether this ticket was a traffic ticket or a parking ticket. There is no indication as to whether this ticket later led to further legal consequences for the applicant. The record establishes that the applicant did contact the California Department of Justice, Record Support Section, Assistant Manager, who provided a letter which states that a check for the applicant's fingerprints in the California Department of Justice records indicates that he has no criminal history in California. The record also indicates that the applicant submitted this letter into the record prior to the issuance of the NOID. In addition, the record indicates that the Federal Bureau of Investigation (FBI) conducted a check for the applicant's fingerprints in its database and this check also yielded no records associated with his fingerprints. Thus, the AAO finds that any suggestion that the application might be denied based on a failure to respond to a request for evidence related to the applicant's 1988 ticket is incorrect.

The director also indicated that the applicant must provide *documentary* evidence of his initial November 1981 entry without inspection into the United States. She also suggested that a LIFE legalization applicant must provide documentary evidence of having been physically present in the United States from November 6, 1986 through May 4, 1988. These points are withdrawn. The regulation at 8 C.F.R. § 245a.16 indicates that an applicant may use documentation issued by a governmental or nongovernmental authority to establish continuous physical presence, but it does not require such evidence. Contemporaneous, documentary evidence is not, in all cases, required to establish the applicant's claim of continuous physical presence or continuous residence in the United States beginning prior to January 1, 1982 and throughout the statutory periods. *See Matter of E-M-*, 20 I&N Dec. 77, 82-83 (Comm. 1989). **Affidavits that are consistent and verifiable may be** sufficient to demonstrate continuous residence throughout the entire statutory period. *See id.*

The director also indicated that the employment letters which the applicant submitted into the record were not sufficient to establish continuous residence in the United States throughout the statutory period without further documentary evidence of his initial entry into the United States prior to January 1, 1982.

In the rebuttal, the applicant indicated that he was not able to also provide tax returns from the statutory period to further document his employment as he was unable to obtain a Social Security number during the statutory period, and therefore he had not filed taxes. He indicated that he had submitted all the evidence that is available to him and that he had established eligibility to adjust to permanent resident status under the LIFE Act.

The director issued a notice of decision in which she denied the application because the applicant had failed to provide contemporaneous, documentary evidence of having been present in the United

States prior to January 1, 1982. Yet, as noted earlier, affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence throughout the entire statutory period. *See Matter of E-M-*, 20 I&N Dec. 77, 82-83 (Comm. 1989). The director also denied the application based on the reasons set forth in the NOID. The AAO finds that the director did not identify a valid basis for denying the application in either the NOID or the notice of decision.

On appeal, the applicant indicated that he had provided all the evidence that was available to him and that the evidence of record did establish that he had resided continuously in the United States during the statutory period.

At issue in this proceeding is whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988.

On May 5, 2009, the AAO issued a notice of intent to dismiss which pointed out that the record includes the following adverse or inconsistent evidence regarding this issue:

1. The Form I-687 that the applicant signed under penalty of perjury on which at item 32, where he was to list any current or former spouse, all sons or daughters, and any siblings, he stated that he has: a daughter, [redacted], born January 14, 1985; a daughter, [redacted], born April 24, 1986; a son, [redacted], born July 6, 1990; a daughter, [redacted], born March 22, 1992; and a daughter, [redacted], born February 27, 1964.[2] The applicant left blank the portion of item 32 where he was to list the country of birth for each of his children.

2. The Form I-485 that the applicant signed under penalty of perjury on which he stated at Part 3, item B, where he was to list his present spouse and all of his sons and daughters that he had: a son, [redacted], born July 6, 1990 in the United States; a daughter, [redacted], born March 22, 1992 in the United States; a son, [redacted], born September 9, 1990 in the United States; and a son, [redacted], born August 25, 2003 in the United States. The applicant failed to list [redacted] and [redacted], his daughters who were born during the statutory period, and a country of birth for each of them on this form.

3. The Form for Determination of Class Membership in *CSS v. Meese* on which the applicant specified that he first entered the United States on November 1, 1981.

4. The affidavit of [redacted] in which the affiant attested that the applicant began residing in Los Angeles, California during February 1981.

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[2] Given that the applicant's date of birth is June 19, 1961, [redacted] could not be his daughter. The AAO explained to the applicant in the notice of intent to dismiss that if he responded to the notice, he should clarify for the record whether [redacted] is, for example, a sibling or a former wife. However, the applicant did not respond to the notice.

5. The affidavit of [redacted] in which the affiant attested that the applicant was her roommate from January 1, 1982 through May 30, 1990 and that he paid 50% of the monthly living and maintenance costs of their shared apartment at [redacted], Los Angeles.

6. The affidavit of in which the affiant attested that the applicant was his roommate from January 1982 through May 1990.

The AAO explained in the notice of intent to dismiss that the applicant stated on the Form for Determination of Class Membership that he first entered the United States on November 1, 1981. However, the affiant, [redacted], attested that the applicant began residing in California during February 1981. The applicant's failure to provide consistent evidence regarding when he first entered and began residing in the United States casts doubt on his claim that he began residing in the United States prior to January 1, 1982. The affidavit of [redacted] indicates that she and the applicant shared an apartment from 1982 through 1990 and that the two of them split certain expenses of the apartment evenly, suggesting that there were only two roommates in that apartment. Yet, the affidavit of [redacted] indicates that the applicant shared an apartment with him from 1982 through 1990. This discrepancy casts doubt on the applicant's claim that he resided in the United States throughout the statutory period. The applicant stated on the Form I-687 that two of his daughters [redacted] and [redacted] were born during the statutory period, but he did not list a country of birth for either daughter. On the Form I-485 the applicant did not list his daughters [redacted] and [redacted] at all. His failure to provide a consistent and complete account of how many and which of his children were born during the statutory period and in what country they were born casts doubt on his claim that he was residing in the United States during 1985 and 1986 when [redacted] and [redacted] were born. This in turn casts doubt on the applicant's claim that he was residing in the United States throughout the statutory period.

These discrepancies cast doubt on the authenticity of all the evidence of record, including the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States throughout the statutory period.

In the notice of intent to dismiss, the AAO stated that the preponderance of the evidence does support the finding that from November 1986 through the end of the statutory period and following

the applicant resided in Los Angeles, California and worked at Universal Elegance, import business, which later became known as Orient Impex, Inc., also of Los Angeles. However, the evidence in the record that the applicant entered the United States prior to January 1, 1982 and resided in this country through November 1986 such as the letters from [redacted], a pastor in California, which are not on formal letterhead stationery, and other statements and affidavits in the record are not independent, objective evidence sufficient to overcome the inconsistencies in the record regarding the applicant's claim that he resided in the United States from a date prior to January 1, 1982 through November 1986.

The applicant failed to provide contemporaneous evidence that might be considered credible, independent, objective evidence of having resided in the United States from a date prior to January 1, 1982 and through November 1986.

Thus, the AAO stated in the notice of intent to dismiss that the applicant had failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Based on this, the AAO found that the applicant had failed to establish eligibility to adjust under the LIFE Act and therefore, this office intended to dismiss the appeal.

The AAO explained that the applicant must offer, in response to the notice of intent to dismiss, independent and objective evidence from credible sources which thoroughly rebut the discrepancies described above, or this office would dismiss the appeal. The applicant failed to respond to the notice of intent to dismiss during the time period allowed. Therefore, the appeal will be dismissed.

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