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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: DENVER Date: **JUN 30 2009**

MSC 03 251 62660

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).

IN 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, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988. The director also denied the application because the applicant had failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988

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 and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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).

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding basic citizenship skills, an applicant for permanent resident status must demonstrate that he or she:

> (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
>
> (II) is satisfactorily pursuing a course of study (recognized by the [Secretary of Homeland Security]) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Secretary of Homeland Security may waive all or part of the above requirements for applicants who are at least 65 years of age or who are developmentally disabled. *See* 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 – 312.3.

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. 8 C.F.R. § 245a.17(a)(2). The high school or GED diploma may be submitted either at the time of filing the Form I-485 LIFE Act application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

Finally, an applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

> He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The applicant may submit certification on letterhead stationery from a

> state recognized, accredited learning institution either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after six months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. 8 C.F.R. § 245a.17(b).

The first issue to be addressed is whether the applicant has satisfied the "basic citizenship skills" requirement.

The record reflects that the applicant was interviewed twice in connection with his LIFE application, on January 18, 2007, and again on September 18, 2007. On both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

In response to the Notice of Intent to Deny issued on November 9, 2007, counsel asserted that at the time of his first interview, the applicant was informed that "he could return with a letter stating that he had completed forty hours of English and history/government instruction. He was told that if he did so, he would not be retested."

The record contains a letter dated June 22, 2007, from [redacted], senior professor at Aims Community College in Greeley, Colorado, who indicated that the applicant has taken 40 hours of classes in USA History and Government since November 4, 2006.

In his Notice of Intent Deny, the director, acknowledged letter, but noted that the letter did not establish the applicant had attended a state recognized accredited learning institution and that the institution had a course content that included at least 40 hours of instruction in English and United States history and government. 8 C.F.R. § 245a.17(a)(3).

On appeal, counsel provides a letter from [redacted], an English as a Second Language instructor at Aims Community College. [redacted] indicates that the applicant has been attending classes since February 11, 2008.

The documentation from the Aims Community College does not provide any confirmation that it is "a state recognized, accredited learning institution," as required by 8 C.F.R. § 245a.17(a)(3). Furthermore, 8 C.F.R. § 245a.17(a)(3) requires that the applicant submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing the Form I-485, subsequent to filing the application but prior to the interview, or at the

time of the interview. In the instant case, documentation from a state recognized, accredited learning institution should have been submitted to Citizenship and Immigration Services prior to or at the time of the applicant's second interview on September 18, 2007. The applicant failed to meet this requirement as the documentation from [redacted] was presented *subsequent to* the applicant's interview. Assuming, arguendo, that the organization is a state recognized, accredited learning institution, the applicant still would not qualify for the benefit being sought as the letter from [redacted] was presented subsequent to the applicant's interview.

Counsel asserts that given the applicant's education, background, age, and length of residence in the United States, "and his being just months away from qualifying for a complete exemption from the entire requirement, it is likely that he satisfied the citizenship requirement to the extent intended by the drafters of the LIFE Act."

Counsel, however, cites no statute or regulation that compels the director to approve an application where an individual has not met the regulatory or statutory requirements. The applicant, who was 48 years old at the time he took the initial basic citizenship skills test, provided no evidence to establish that he was developmentally disabled and, therefore, does not qualify for either of the exceptions in section 1104(c)(2)(E)(ii) of the LIFE Act.

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at his two interviews he did not demonstrate a minimal understanding of the English language and minimal knowledge of United States history and government.

Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The second issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

At the time of his initial interview on September 7, 1995, the applicant, under oath, admitted that he first entered the United States in March 1982.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- An affidavit from [redacted], who attested to the applicant's absence from the United States from September 2, 1987 to September 20, 1987. The affiant indicated that he drove the applicant to the Mexican border and picked him up upon his return to the United States.
- Letters dated October 25, 1993, and March 13, 2007, from [redacted], owner of Jet I Inc., in Paramount, California, who indicated that the applicant was in his employ from

June 23, 1981 to November 30, 1985 and from May 2, 1987 to 1999. The affiant acknowledged that [redacted] and [redacted] are one and the same person. In his letter of March 13, 2007, the affiant indicated that he did not have any records as it was his company's policy to destroy personnel documents after five years of inactivity.

- Several pay stubs dated during 1986 and 1987 and a 1988 wage and tax statement addressed to [redacted] from MICA Furniture Mfg. in Placentia California.
- Pay stubs dated March 25, 1988, addressed to [redacted] from Belmont Manufacturing and Engineering.
- Forms 1040, U.S. Individual Income Tax Return, for 1987 and 1988 which listed [redacted] as the individual filing each form.

On November 9, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the documents submitted did not establish continuous residence in the United States during the requisite period. The applicant was also advised of his sworn testimony taken on September 7, 1995.

In regards to the applicant's first entry date, counsel, in response, asserted, "a notario wrote that [the applicant] first entered the country in March 1982. [The applicant] met this notario in the waiting area of the office in which he had obtained the CSS application. The notario offered to help [the applicant] fill out the form." Counsel asserted that the applicant, who did not speak much English, trusted that the notario had accurately transcribed the relevant information, and submitted this application with the incorrect date of his first entry. Counsel asserted that the applicant's true date of entry is February 1981 and that he provided a letter from his employer, [redacted] where he was employed during 1981. Counsel asserted that the employment letter from [redacted] is specific and probative and should be accorded substantial weight given the absence of an adverse credibility finding. Counsel submitted an affidavit from the applicant, who indicated that he entered the United States in February 1981 and that a notary assisted him in filling out his application in 1995 and "He [the notary] wrote that I had entered in March 1982 because he got confused."

The director, in denying the application, noted that: 1) the applicant's sworn testimony of September 7, 1995, brings into question the authenticity of the letters from [redacted]; 2) at the time the applicant filed his Form I-687 application in 1993, it was presumed that his employment records with [redacted] would have been available; however, no records were submitted along with the initial letter; 3) as the pay stubs for 1986 and 1987 and the Forms 1040 pertain to an individual named [redacted] they cannot serve to establish the applicant's presence in the United States during these periods; and 4) at the time of his LIFE interview, the applicant indicated that he had only one child; however, the Form 1040 for 1987 listed four children as dependents. The director noted that the tax returns did not relate to the applicant unless he had provided false information to a federal government agency.

In regards to the letters from [redacted], counsel, on appeal, asserts that in his 1993 letter, the affiant indicated that further information was available if needed. Counsel asserts "because no one requested this information from him and because [the applicant] was not asked for additional

corroborating evidence until fifteen years later, the employment records were, quite reasonably, destroyed by [redacted]

In regards to the Forms 1040, counsel, on appeal, asserts that the applicant is taking steps to remedy any improper claims on past tax returns. Counsel asserts, "[r]egardless, for CIS to infer that anyone who makes questionable claims for deductions on their tax return must also be dishonest on an application for residency is a somewhat tenuous leap of logic."

Counsel submits an affidavit from [redacted] of Buckeye, Arizona, who indicated that he met the applicant in January 1982 in Artesia, California. The affiant indicated that the applicant resided with him and his family for three months during 1982 at [redacted] Artesia, California. The affiant indicated, "[a]fter he left my residence we kept in touch and frequented each other until he moved to Colorado." Counsel also submitted an affidavit from [redacted], an acquaintance who resides in Mexico and who attested to the applicant's departure in January/February 1981 in order to work in the United States.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--, supra.* In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--, supra*, the affidavits should be analyzed to determine if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant and counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

[redacted] in his affidavit, indicated that the applicant resided in his home, [redacted] Artesia, California, for three months during 1982. However, on his Form I-687 application, the applicant claimed residence at this address from October 1986 to February 1987. Considering the length of time [redacted] claims to have known the applicant, the affiant provides remarkably few details about the applicant's life in the United States, such as his places of residence, where he worked and his interaction with him over the years. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.

The affidavit from [redacted] can only serve to attest to the applicant's departure from Mexico in January/February 1981 as the affiant did not reside in the United States during the period in question.

The applicant claims that a notario assisted him in filling out his Form I-687 application in 1993. The Form I-687 application, however, does not reflect that anyone other than the applicant completed the application, as no information is listed in items 48 and 50 of the application; items 48 and 50 of the application request the name, address and signature of the person preparing the form. Further, counsel's assertion that a notario "wrote" that the applicant first entered the country in March 1982 has no merit. As previously noted, the applicant, at the time of his interview, *admitted* under oath that he initially entered the United States in March 1982.

The applicant has not provided any credible evidence from MICA Furniture Mfg. to establish that he and [redacted] are one and the same person. As such, the pay stubs have no probative value or evidentiary weight. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel asserts the "tax returns establish that despite switching the last names [redacted] and [redacted] the applicant consistently used the same social security number, further evidencing that [the applicant] and [redacted] are the same person." Counsel's assertion has no merit as the Social Security Statement dated May 1, 2006, only reflects the applicant's earnings since 1990.

The 1987 and 1988 income tax returns have little evidentiary weight or probative value as they were not certified as being filed and it has not been established that they pertain to the applicant. In addition, the addresses listed on the income tax returns do not correspond with the addresses the applicant claimed on his Form I-687 application during the 1987 and 1988 period.

These inconsistencies tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden

of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

Finally, the record contains:

- A court disposition from the Los Angeles County Municipal Court, which reflects that on April 25, 1995, the applicant was convicted of violating section 273.5(a) PC, inflicting corporal injury upon a spouse, a misdemeanor. The applicant was ordered to serve 60 days in jail and placed on probation for three years. [redacted]

- A court disposition from the Summit County Court in Colorado, which reflects that the applicant was convicted of violating section 42-4-1301(1)(a), driving under the influence, a misdemeanor. The applicant was sentenced to serve time in jail and ordered to pay a fine. [redacted]

While these convictions do not render the applicant ineligible pursuant to 8 C.F.R. §§ 245a.11(d)(1) and 245a.18(a), the AAO notes that the applicant does have two misdemeanor convictions.

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