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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: LOS ANGELES Date: MAY 2 2 2009

MSC 03 245 61397

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 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 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 asserts that the director did not properly evaluate and give due weight to the documentation submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement 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 claims to have lived in the United States since June 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 2, 2003.

In a Notice of Intent to Deny (NOID), dated February 12, 2008, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and thereafter resided continuously in an unlawful status in the country through May 4, 1988. The director indicated some of the documents are contradictory and substantively deficient. The applicant was granted 30 days to submit additional evidence.

The applicant responded and submitted additional document. However, on March 10, 2008, the director denied the application on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the director did not properly evaluate and give due weight to the documentation submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for LIFE legalization.

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 entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through the requisite period for LIFE legalization, consists of the following:

- A series of letters and affidavits – dated in 1991, 2003, and 2008 – from individuals who claim to have resided with, or otherwise known the applicant in the United States during the 1980s.
  Various merchandise, retail and money order receipts dated in the 1980s, with handwritten notations of the applicant's name and sometimes no address.
- A letter from [redacted], dated December 23, 1991, stating that the applicant was his patient and that "chiropractic care was rendered by our staff from August 81 to September 81; again from April 86 to June 86; depending on the episode of exacerbations."
- A photocopied envelope with illegible postmark date addressed to the applicant at [redacted], Los Angeles, California, from an individual in Mexico.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The documentation submitted is not probative or credible.

The record reflects that the applicant was deported from the United States to Mexico on June 5, 1997, and subsequently reentered the United States at some point without prior authorization and remained in the country unlawfully. Pursuant to section 212 (a)(9)(A), the applicant is inadmissible to the United States as an alien previously removed from the United States, and therefore is ineligible to adjust status under the LIFE Act, unless the applicant applies for and is granted a waiver under 8 C.F.R. § 245(a) 18(c). The record reflects that the applicant submitted a Form I-690, Application for Waiver of Grounds of Inadmissibility on June 9, 2006, which was approved on August 24, 2007. Thus the applicant has established that he is admissible. The AAO will conduct a *de novo* review of the documentation in the record to determine whether the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement for legalization under the LIFE Act.

The letters and affidavits in the record from individuals who claim to have resided with or otherwise known the applicant during the 1980s have minimalist formats providing very little details about the applicant's life in the United States such as where he worked and their interactions with him over the years. The letters and affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationships with the applicant in the United States during the 1980s. Three letters from [redacted] and [redacted], all dated in 2003 have similar wording, all claiming to have known the applicant since July 1981, and that the applicant resided at [redacted] The information on these three letters regarding the applicant's residential address during the 1980s is inconsistent with the information provided by the applicant on the Form I-687 (application for status as a temporary resident) he filed in 1991. On that form, the applicant indicated his residential address as [redacted] Wilmington, California, from May 1981 to June 1990. This inconsistency calls into question the credibility of the letters as evidence of the applicant's continuous residence in the United States during the requisite period. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In view of the substantive shortcomings and contradiction, 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.

The photocopied envelope addressed to the applicant at [redacted] Los Angeles, California, has an illegible postmark date and the original envelope has not been submitted for a more precise determination. The address on the envelope is the address stated by the applicant on the Form I-687 as his residential address from 1990. Thus, the envelope has no probative value as evidence of the applicant's continuous residence in the United States during the requisite period for adjustment of status under the LIFE Act.

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence – consisting of a letter from [redacted] stating that the applicant received chiropractic care at his office in 1981 and 1986, and various receipts – is suspect and not credible. For example, the letter from [redacted] that the applicant received care at his office in 1981 and 1986 is short on detail; the letter did not indicate the applicant's address, did not indicate when the applicant was seen at the doctor's office and how often, did not indicate the nature of treatment received by the applicant and did not supplement the letter with any medical or hospital records to show that the applicant was indeed seen by the doctor during the periods indicated. Furthermore, [redacted] did not identify his source of information that the applicant received chiropractic care in 1981 and 1986, by "our staff." Thus, it must be concluded that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988.

Beyond the decision of the director, the record reflects that the applicant stated on a Form I-589 (application for asylum) he filed in February 1995 [redacted], that he first entered the United States on June 5, 1981 and again on July 10, 1987. On the Form I-687, the applicant stated that traveled outside the United States only once during the 1980s – a trip to Mexico from May to June 1987. The applicant did not indicate any other absences from the United States during the 1980s. On the Form I-589, the applicant described incidents of abuse by the government of Mexico on account of his political opinion. For example, that he was arrested and detained for two and a half months in Mexico because of his political activities, and a brief detention in February and March 1987. Based on the record, it is unclear how long the applicant was out of the United States during the requisite period. Nevertheless, the acknowledged absence from May to July 1987, exceeded the 45 days maximum for a single absence prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being." The applicant has not established that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from Mexico in 1987 within the 45-day period allowed in the regulation. Thus, the applicant's absence from the United States in 1987 would have interrupted his continuous residence in the United States. On this ground as well, therefore, the applicant has failed to establish his eligibility for legalization under the LIFE Act.

For the reasons discussed above, 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.

The appeal will be dismissed, and the application denied.

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