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

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: GARDEN CITY Date: MAY 22 2009

MSC 02 115 60170

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 Garden City, New York. 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 the evidence submitted by the applicant in support of his application. Specifically, counsel asserts that the director did not consider the applicant's response to the NOID in his decision to deny the application. In counsel's view, the evidence of 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 the Colombia who claims to have lived in the United States since April 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on January 23, 2002.

In a Notice of Intent to Deny (NOID), dated July 24, 2007, 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 resided continuously in the country through the period required for legalization under the LIFE Act. The director indicated that the affidavits in the record are substantively deficient. The applicant was granted 30 days to submit additional evidence.

The applicant responded by a letter from counsel offering some explanations for the evidentiary deficiencies cited in the NOID. Without acknowledging receipt of the applicant's response, on August 27, 2007, the director issued a Notice of Decision stating that the applicant failed to

respond to the NOID or submit additional evidence and denied the application based on the reasons cited in the NOID.

On appeal, counsel asserts that the director did not properly evaluate the evidence submitted by the applicant in support of his application. Specifically, counsel asserts that the director did not consider the applicant's response to the NOID in his decision to deny the application. [1] In counsel's view, the evidence of 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:

- An affidavit from [redacted] dated November 1, 1989, stating that the applicant had been working for [redacted] in Brooklyn, New York, since May 1981.
- A letter from [redacted], of Immaculate Conception Monastery Church in Jamaica, New York, dated November 12, 1989, stating that the applicant was a member of the parish "since July 1981," attended services on a regular basis and was personally known to "our priest."
- A series of affidavits – dated in 1989, and 2001 – from individuals who claim to have rented an apartment to, worked with or otherwise known the applicant resided in the United States during the 1980s.

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[1] The record reflects that counsel submitted a response to the director's NOID dated August 22, 2007. It is unclear whether the response was received in time before the decision to deny was issued by the director. Nonetheless, the AAO will conduct a *de novo* review of the applicant's response to the NOID as well as all documentation in the record to determine whether the applicant met the continuous residence requirement for legalization under the LIFE Act.

- Several retail and/or merchandise receipts with handwritten notations of the applicant's name and sometime address, dated in the 1980s (July 1980, May 1983, May 1985 and November 1986).
- Three Earnings Statements with the applicant's name dated March, April and May 1988.
- Two envelopes addressed to the applicant at [redacted] Brooklyn, New York, with illegible postmarks from individuals in Colombia.

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

The letter from [redacted] stating that the applicant had been employed by [redacted] since May 1981, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address during the periods of employment and did not indicate whether there were periods of layoff. [redacted] did not identify his position at the Bakery, did not indicate whether his information about the applicant's employment is based on company records and whether the record is available for verification. The letter is not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during the periods indicated. Only three of the earnings statements submitted by the applicant covered part of the required period – March, April and May 1988. Even those earning statements are photocopies with the name of the company missing from the copies. No original was submitted in the file. The applicant did not submit any explanations why he was unable to produce earnings statements from prior years back to May 1981, when he allegedly began his employment with the company. In view of the substantive deficiencies the letter of employment has limited probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The letter from Immaculate Conception Monastery Church in Jamaica, New York, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. [redacted] did not specify his position with the church, whether he is entitled to author such letter. The letter vaguely stated that the applicant has been " a member of our parish since July 1981, and did attend services at our church on a regular basis and was personally known to our priest," but did not indicate the inclusive date of membership, did not state where the applicant lived at any point in time during the 1980s, did not indicate how and when [redacted] met the applicant, and did not state whether his information about the applicant was based on [redacted] personal knowledge, the church's records, or hearsay. [redacted] just stated that the applicant was "personally known to our priest," but did not specify

the source of the information. Since the letter did not comply with sub-parts (B), (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letter has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits in the record – dated in the 1989, and 2001 – from individuals who claim to have rented an apartment to, worked with, or otherwise known the applicant during the 1980s – have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in all cases since 1981 – the affiants provide remarkably little information about the applicant's life in the United States, and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of their personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, 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 envelopes in the record have illegible postmarks and it is not possible to determine with any certainty when the envelopes were mailed. In addition, the envelopes do not bear a United States Postal date stamps to show that the envelopes were processed in the United States and were delivered to the applicant as addressed. Thus, the envelopes have limited probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the receipts in the record, they have handwritten notations of the applicant's name; and only one receipt bears the applicant's address. The receipts have no stamp or other official marking to verify the dates they were written. In view of the substantive shortcomings, the receipts have limited probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

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.