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

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CHICAGO Date: SEP 02 2009
– consolidated herein]
MSC 02 245 60447

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 Chicago, Illinois. 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 evidence submitted by the applicant. Counsel asserts that the totality of the evidence shows 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."

"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." 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 December 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 2, 2002.

In a Notice of Intent to Deny (NOID), dated June 28, 2006, the director indicated that the applicant has not submitted sufficient credible evidence to establish that he meets the continuous residence requirement for LIFE legalization. Specifically, the director noted that the affidavits submitted by the applicant were substantially deficient. The applicant was granted 30 days to submit additional information.

The applicant timely responded by offering some explanations for the evidentiary deficiencies cited in the NOID, and submitted additional documentation. On April 9, 2007, however, the director issued a Notice of Denial denying 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 evidence submitted by the applicant. Counsel asserts that the totality of the evidence shows that the

applicant has satisfied the eligibility requirement for LIFE legalization. Counsel submitted no additional documentation with the appeal.

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 record reflects that the applicant submitted conflicting statements and documentation regarding his initial entry into the United States and his continuous residence in the country through the requisite period. At his LIFE legalization interview on February 23, 2006, the applicant stated that he entered the United States for the first time on June 12, 1973, near Laredo, Texas. That he left the United States on December 10, 1980 and reentered the country on December 29, 1980, near Laredo, Texas.

On the Form I-687 (application for status as a temporary residence) he filed in 1990, the applicant indicated that he entered the United States on December 29, 1980, and that he made two trips outside the United States to Mexico during the 1980s. The first trip was June to July 1982 to get married, and the second trip was from November to December 1987 to visit his family. On that form, the applicant indicated that he has two daughters both were born in Mexico on July 3, 1984 and December 26, 1985.

On the Form I-485 he filed in 2002, the applicant indicated that he made two trips outside the United States during the 1980s. While the date of his trip to Mexico in 1987 remained the same, the applicant indicated that his trip to Mexico in 1982 was in the month of April.

The applicant testified under oath in his removal proceedings on February 4, 1998, that he first entered the United States on December 29, 1980, and that his first exit from the United States was in October 1987 to Mexico and that he returned to the United States within two weeks.

On the Form EOIR-42B (application for cancellation of removal and adjustment of certain nonpermanent residents) he filed in 2000, the applicant indicated that he traveled outside the United States on four different occasions during the 19802. The first trip was within the month of April 1982 to get married, the second trip was within the month of September 1983 to visit his family, the third was within the month of March 1985, and the last trip was from November to December 1987.

The births of the applicant's children in Mexico in July 1984 and December 1985, suggest that the applicant must have been in Mexico at the time of their conception. None of the dates the applicant claimed to have been in Mexico accounted for the conception of his children. There is no evidence that the applicant's wife was in the United States during the 1980s. In fact the

applicant indicated on the Form EOIR-42B that his wife first came to the United States in 1994. The conflicting statements provided by the applicant about his entry into the United States, his trips outside the United States and his continuous residence in the United States, as well as the absence of any objective evidence to establish his entries into the United States, cast grave doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

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. *See 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.*

As discussed above, the applicant has submitted conflicting statements and documents in support of his application. The applicant has not provided any objective evidence to justify and reconcile the contradictions. Therefore, the remaining documentation in the record consisting of – affidavits from businesses who claim to have employed the applicant during the 1980s as well as letters and affidavits from individuals who claim to have resided with or otherwise known the applicant during the 1980s – is suspect and not credible. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

For example, the record includes (1) an affidavit of employment from [redacted], vice president of Sotco Drywall and owner of Oak Drywall in Houston, Texas, sworn to on April 5, 1988, stating that a [redacted] (the assumed name used by the applicant) was employed from February 1981 to December 1986, as a drywall finisher and was paid $7.00 per hour; (2) an affidavit of employment from of La Huacana Grocery Store in Chicago, Illinois, sworn to on November 16, 1990, stating that a (the assumed name used by the applicant) was employed from January 10, 1987 to April 20, 1989.

The regulation at 8 C. F. R. § 255.a(d)(3)(i) specifies that past employment records, may consist of pay stubs, W-2 Forms, certification of the filing of Federal income tax returns on IRS Form 6166, state verification of the filing of the state income tax returns, letters from employer(s) or, if the applicant has been in business for himself or herself, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include: (a) alien's address at the time of employment; (b) exact period of employment; (c) periods of layoff; (d) duties with the company; (e) whether or not the information was taken from official company records; and (f) where such records are located and whether the Service may have access to the records. The affidavits listed above do not meet the regulatory requirements listed above because they did not provide the applicant's address during the periods of employment; did not indicate whether the information was taken from company

records; and did not indicate the location of such records and whether they are available for review. Nor are the documents supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years in question. For the reasons stated above, the employment documents have little probative value. They are not persuasive evidence that the applicant continuously resided in the United States from before January 1, 1982 through May 4, 1988.

The record also includes letters and affidavits from individuals who claim to have resided with or otherwise known the applicant during the 1980s. The letters and affidavits have minimalist or fill-in-the-blank formats with limited personal input by the authors. For the amount of time they claim to have known the applicant – in most cases since 1981 – the authors provided few details about the applicant's life in the United States, such as where he worked, and the nature and extent of their interaction with him during the 1980s. The letters and affidavits are not accompanied by any documentary evidence of the author's own identities and residence in the United States during the 1980s, nor any photographs, letters, or other documentation demonstrating the authors' personal relationships with the applicant in the United States during the 1980s. For the reasons discussed above, the letters and affidavits have limited probative value. They are not persuasive evidence that the applicant continuously resided 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 continuously resided 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.