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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

L2

[redacted]

FILE: [redacted] Office: HOUSTON Date: AUG 2 3 2010

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Houston, Texas and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had failed to establish continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act. The director indicated that the applicant had not submitted sufficient evidence of either his entry to the United States prior to January 1, 1988 or his continuous residence in the United States for the duration of the relevant period and the evidence in the record contained several inconsistencies.

On appeal, the applicant indicates that he will submit a brief within 30 days following receipt of the record of proceedings. This request was processed on November 17, 2009.[1] The applicant also indicates that he did not receive a copy of the Notice of Intent to Deny (NOID).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

An applicant for permanent resident status 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).

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 under the provisions of section 212(a) of the 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).

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. 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.

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[1] NRC2009026031

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 petitioner 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 (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 or petition.

On October 15, 2007, the district director issued a notice of intent to deny (NOID) to the applicant informing him of the Service's intent to deny his LIFE Act application, which was sent to his address of record. The file does not contain a return to sender envelope, and the address listed on the NOID is the same address currently on record for the applicant. Thus, the applicant's assertion that he did not receive the NOID is not supported by the record.

In support of his assertion that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the relevant period, the applicant submits affidavits from the following individuals:

- [redacted] who indicates that he worked with the applicant at [redacted] in Houston, Texas, from March 1986 until March 1995.

- [redacted] who indicates that the applicant worked continuously for him from 1980 until 1986 at three different companies, Corky's Country, Cadillac Bar and The Back Bay. No additional information is provided, such as the address at which the applicant resided during that period, or whether the information was taken from official company records. In addition, the letter does not contain a statement that the applicant's employment records are available for examination by United States Citizenship and Immigration Services (USCIS) as necessary. Therefore, this letter does not meet the requirements of 8 C.F.R. §245a2(d)(3)(i).

- [redacted] and [redacted] The affiants all indicate that they accompanied the applicant to the USCIS office in Houston, Texas in April 1988 to file his legalization paperwork. Their statements contradict the applicant's statement taken by USCIS officers at his December

10, 1991 interview in connection with his Form I-687 application. During that interview, the applicant indicates that he returned to Mexico in May 1988 and remained in Mexico until September 1990. He further testified that he did not apply for legalization prior to his May 1988 departure. On appeal, the applicant indicates that the officer who conducted the interview misunderstood him. 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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. The applicant has not submitted any evidence which resolves this inconsistency in his favor.

- [redacted] who indicates that he drove the applicant to the bus terminal when he returned to Mexico in July 1987.

Although the affiants state that they met the applicant during the relevant period, their statements do not supply enough details to be considered probative of the applicant's continuous residence in the United States during the required period. Specifically, none of the affiant's indicate how they date their initial acquaintance with the applicant, how frequently they saw the applicant during the relevant period or where the applicant resided during the relevant period. The only additional evidence contained in the record consists of copies of envelopes with date stamps in 1985 and 1986. The envelopes are some evidence of the applicant's presence in the United States on those dates, but do not constitute evidence of continuous residence.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

It is further noted that the applicant was apprehended on January 30, 1993 for attempting to enter the United States using false documents in violation of 8 U.S.C. § 1325.

Section 212(a)(6)(C) of the Act provides:

> Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By engaging in such action, the applicant has rendered himself inadmissible to the United States under any visa classification, immigrant or nonimmigrant pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation. This ground of

inadmissibility may be waived, however, the issue is moot as the applicant has not established his eligibility for the benefit sought.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 throughout the relevant period as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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