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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] MSC 02 183 62824

Office: DALLAS

Date: OCT 12 2006

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Dallas, Texas, 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 since before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant's authorized representative timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit, in which she asserted that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than 30 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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; 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 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 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.

Although Citizenship and Immigration Services (CIS) 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).

On a questionnaire to determine class membership, which he signed under penalty of perjury on June 26, 1990, the applicant stated that he first entered the United States in October 1981, when he was 12 years old. The applicant also stated on his Form I-687, Application for Status as a Temporary Resident, which he filed

on June 26, 1990, that he was absent from the United States from May to June 1985 for an emergency, and from December 1986 to January 1987 on vacation in Mexico. The applicant further stated that he lived at [REDACTED] Texas from 1981 to June 1982, and at [REDACTED] from June 1982 until August 1989.

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

1. A June 20, 1990 sworn statement from [REDACTED] in which he certified that he was the applicant's guardian and that he provided the applicant with a home and financial support. [REDACTED] stated that the applicant lived with him during the qualifying period at the following addresses: from 1981 to June 1982 at [REDACTED], and from June 1982 to August 1989 at [REDACTED]. This statement, however, is inconsistent with a March 12, 2003 affidavit, in which [REDACTED] certified that the applicant lived with him at [REDACTED] from 1982 to 1989. [REDACTED] also stated that he met the applicant "in 1982, when he was fifteen years old and did not have relatives in this country and I invited him to live with me." This information conflicts with [REDACTED] earlier statement and that of the applicant, in which they state that the applicant lived with [REDACTED] in 1981. The applicant submitted no independent and objective documentary evidence to establish that he lived with [REDACTED] at any address during the qualifying 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 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).
2. A June 14, 1990 sworn statement from [REDACTED] in which he stated that he was the owner of Camionetas Laguneras, and that the applicant worked for him as a maintenance mechanic from November 1985 until the date of the statement.
3. A June 14, 1990 sworn statement from [REDACTED] in which he stated that he has known the applicant since 1981. [REDACTED] did not indicate the circumstances of his initial acquaintance with the applicant, did not state that this meeting occurred in the United States, or that the applicant was present and living in the United States during the required period.
4. A June 23, 1990 sworn statement from [REDACTED] in which he stated that he has known the applicant since 1981. [REDACTED] did not indicate the circumstances of his initial acquaintance with the applicant, did not state that this meeting occurred in the United States, or that the applicant was present and living in the United States during the required period.
5. An October 15, 2003 letter from [REDACTED] who stated that he is the pastor of [REDACTED] Calvario in Dallas, Texas. [REDACTED] also stated that he met the applicant in early 1982, when he was 13 years of age, and invited him to attend church where he then pastored.
6. A March 2, 2004 notarized statement from [REDACTED] in which he stated that he has known the applicant since 1984, when he met him through a client.

In this instance, the applicant has submitted several affidavits and third-party statements attesting to his residence in the U.S. during the period in question. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the documentation submitted by the applicant is either vague or contains unresolved contradictions. The applicant submitted no contemporaneous evidence of his presence and residency in the United States during the requisite period. Given the absence of any contemporaneous documentation and the inconsistent evidence in the record, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

We note that the applicant was convicted on June 23, 1993 in the County Criminal Court of Dallas County, Texas, of driving while intoxicated, a class B misdemeanor. The applicant was sentenced to 90 days in jail, 24 months probation and fined \$600. The record also reflects that the applicant was apprehended by the Border Patrol on March 30, 1996, and deported to Mexico on April 24, 1996.

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