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**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE:

MSC 02 236 61994

Office: PHOENIX

Date:

AUG 01 2008

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.

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 (director) in Phoenix, Arizona. It is now on appeal before the Administrative Appeals Office (AAO). 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 failed to properly consider the evidence submitted by the applicant to establish his continuous unlawful residence in the United States since 1980.

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 March 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on February 24, 2002. As evidence of his residence in the United States during the years 1981-1988 the applicant submitted a series of letters and affidavits some of which had originally been filed in 1990. They included the following:

- A letter from the manager of Standard Magnetic Corporation in Anaheim, California, dated April 3, 1990, stating that the applicant was employed from May 23, 1985 to December 12, 1986.

A letter from the proprietor of Christiania Inn in South Lake Tahoe, California, dated June 19, 1990, stating that the applicant was employed as a kitchen staff worker in 1986 on a part-time basis and then converted to a full time in 1988.

- Affidavits from [REDACTED], a resident of Pomona California, dated April 1, 1990, and October 17, 2003, stating that he has known the applicant since March 1980, that he provided the applicant with room and board from March 1980 to March 1985, at his house located at [REDACTED] California, and

that the applicant helped him with maintenance work and some work at a swapmeet.

- An affidavit from [REDACTED] dated June 19, 1990, stating that the applicant lived in his apartment located at [REDACTED] from 1985 to 1988.
- Affidavits from [REDACTED] a resident of Pomona, California, dated April 1, 1990, from [REDACTED] dated April 1, 1990, from [REDACTED] a resident of Pomona, California, dated April 2, 1990, from [REDACTED] a resident of Ontario, California, dated April 4, 1990, from [REDACTED] dated October 18, 2003, and from [REDACTED] a resident of Moreno Valley, California, dated October 18, 2003, all stating that they have known the applicant since the early 1980s, and that they are aware that the applicant has resided continuously in the United States since then.

An affidavit from [REDACTED] resident of Durango, Mexico, dated October 6, 2003, stating that the applicant is his son, that he gave the applicant permission to travel and work in the United States on May 15, 1980, that during a recruitment drive by the National Mexican Army, he enlisted and registered the applicant, that the army does not require its recruits to provide field service, that the recruits are automatically exempt from service and that he collected the applicant's military service card from the army.

- An affidavit from [REDACTED] dated October 12, 2003, stating that he has been a lifelong friend and acquaintance of the applicant since their days growing up in Mexico, that he met the applicant in the United States in 1982 through a mutual friend in Pomona, California, that they saw each other again in 1987, in New Mexico, where they worked and lived near each other for about two months, and that he has kept in touch with the applicant since then.
- A copy of a Mexican Army document dated December 15, 1984, stating that the applicant participated in a lottery that took place at Durango Plaza, Durango, Mexico on October 30, 1983, resulting in the applicant winning a "Black Ball or Dot."
- A copy of the applicant's Mexican National Military Service Card, issued by the Secretary of National Defense in Durango, Mexico, on August 8, 1983.
- A letter from the Office of Regional Education Services in Mexico, certifying that the applicant completed his secondary education, and was issued a certificate of completion on June 27, 1980.

In a Notice of Intent to Deny (NOID), dated August 24, 2006, the director, after listing pertinent documentation in the record, indicated that the applicant had not provided sufficient credible evidence to establish that he resided continuously in the United States from before January 1, 1982, through May 4, 1988. The director cited some inconsistencies in the evidence of record which undermined the credibility of the applicant's claim to have resided continuously in the United States during the time period required for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

In response, the applicant offered some explanations for the evidentiary inconsistencies cited in the NOID. The applicant did not submit any additional documentation, but rather referred to previously submitted documents.

On March 8, 2007, the director issued a Notice of Decision denying the application. The director found that the applicant's rebuttal and the documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. The director concluded that the evidence of record failed to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, counsel asserts that the director abused his discretion in denying the application. Counsel asserts that the director failed to properly evaluate the evidence submitted by the applicant in support of his claim. In counsel's opinion, the evidence submitted by the applicant is sufficient to establish that he has been residing in the United States since before January 1, 1982. **The applicant submitted additional documents including the following:**

- A letter from [REDACTED] dated June 18, 2006, stating that the applicant and [REDACTED] lived with him for an undefined length of time during the years 1980 and 1985, at his resident at [REDACTED]
- A letter from [REDACTED] dated June 21, 2006, stating that he shared a household with the applicant at [REDACTED] house located in the City of Pomona, California during an undefined length of time between the years 1980 to 1985.
- A receipt from [REDACTED] in a foreign language with no certified English translation, dated July 11, 1986, with handwritten notation (in English) of the applicant's name and address.

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 employment letters from the manager of Standard Magnetic Corporation, dated April 3, 1990, and from the proprietor of Christiania Inn, dated June 19, 1990, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not provide the applicant's address at the time of employment, state the duties and responsibilities of the applicant, and indicate whether the information was taken from company records, and whether such records are available for review. The AAO also notes that the applicant made no mention of his employment with Christiania Inn, on the Form I-687 he filed in 1990. The letters were not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant actually had the jobs during any of the years claimed.

For the reasons discussed above, the AAO determines that the employment letters have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 through 1988.

The affidavits from [REDACTED] dated April 1, 1990, October 17, 2003, and June 18, 2006, stating that he has known the applicant since 1980, and that the applicant lived at his house located at [REDACTED], during the years 1980 and 1985, and from [REDACTED] dated June 19, 1990, stating that the applicant lived at his apartment located at [REDACTED], from 1985 to 1988, are inconsistent with information provided on the application for Temporary Resident Status (Form I-687) the applicant filed in 1990. On the Form I-687 the applicant stated that he resided at [REDACTED], California, from March 1980 to May 1985 and again from July 1987 to April 1989, and that he resided at [REDACTED] from June 1985 to June 1987.

The inconsistencies noted above cast doubt to the veracity and reliability of the affidavits as credible evidence of the applicant's residence in the United States during the periods stated. In addition, these affidavits are not supplemented by additional documents such as rental agreements or receipts as evidence that the applicant resided at the addresses during the periods stated.

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. *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 for the affidavits by [REDACTED] [REDACTED] dated in 1990, [REDACTED] dated in 2003, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. While they all claim to have known the applicant since the early 1980s, the affiants provide almost no information about his life in the United States and their interaction with him over the years. The information in the affidavits is not very personal in nature, and could just as easily have been provided by the applicant. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s.

In view of these substantive shortcomings, the AAO finds that 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 receipt from Rena-Ware Distributors Inc. is written in a foreign language with no certified English translation. Because the applicant failed to submit certified translations of this document, the AAO cannot determine whether the evidence supports the applicant's claim. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The letter from [REDACTED] dated October 6, 2003, does not provide information as to when the applicant entered the United States, his address(es) in the United States and his continuous residence from before January 1, 1982 through May 4, 1988. While [REDACTED] claims that he collected the applicant's military service card when the applicant was not in Mexico, he failed to explain how the applicant's thumb was affixed to the card. In light of these deficiencies, the AAO finds that [REDACTED] letter is not probative evidence of the applicant's continuous residence in the United States during the statutory period as required under the LIFE Act.

The remainder of the documents – a copy of a Mexican Army document dated December 15, 1984, stating that the applicant participated in a lottery at Durango Plaza, in Durango, Mexico on October 30, 1983, a copy of the applicant's National Military Service Card, signed and dated on August 8, 1983, in Mexico, and a letter from the Mexican Regional Education Service, stating that the applicant completed his high school education and was issued a certificate of completion on June 27, 1980, are inconsistent with information on the applicant's Form I-687, and other evidence in the record claiming that he entered the United States in March 1980 and resided continuously in an unlawful status through May 4, 1988.

On the Form I-687, the applicant listed two absences from the United States, in May 1985 and June 1987, each lasting one month. There is no listing of any absence from the United States in 1983. On Page 1, question #16, the applicant stated that he last entered the United States in March 1980. On his affidavit dated September 8, 2006, and at his interview for permanent

residence under the LIFE Act on February 4, 2003, the applicant stated that he first came to the United States around March 1980.

As stated above, 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. *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 such these documents are not credible evidence of the applicant's residence 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 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, 8 U.S.C. § 245A(a)(2)(A). 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.