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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: 
MSC 02 325 60420

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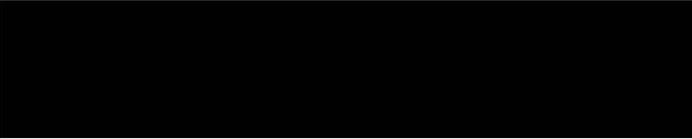
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IN RE: Applicant: 

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the
office that originally decided your case. If your appeal was sustained, or if your case was remanded for
further action, you will be contacted. If your appeal was dismissed, 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On December 13, 2004, the Director, Atlanta, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit credible documents to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant submitted “an extensive amount of documentation” as proof of his continuous residence.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence 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. See 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. 245a.11(b). The applicant 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 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 or 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. 245a.12(f). Affidavits that indicate specific, personal knowledge of the applicant’s whereabouts during the

relevant time period are given greater weight than fill-in-the-blank affidavits that provide generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in CSS v. Meese [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," dated October 17, 1990.

On August 21, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On August 3, 2004, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden and establish by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true.

Although the applicant submits some credible evidence of residence beginning in 1984, including the birth certificate of his child, [REDACTED], born in Santa Ana, California, on September 23, 1987, employment records from 1986, and a letter indicating his child, [REDACTED], attended a Head Start Preschool Program from 1984 to 1985, upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to provide sufficient evidence that he entered and resided in the United States before 1984.

Regarding the requisite period before 1984, the applicant has provided the following documents:

- Three merchandise receipts dated in 1981. Two of the receipts do not contain a name, cannot be attributed specifically to the applicant, and will be given no weight as evidence of his continuous residence in the United States. Although the applicant's name is written on the third receipt, no address is included and, while a receipt for purchases may indicate presence in the United States on the date issued, it has minimal weight as evidence of continuous residence;

- An immunization record for his son, [REDACTED], indicating that the applicant's son received immunizations three times in 1982 and three times in 1987. Although the record indicates that his son received these immunizations, it does not indicate where those vaccinations were administered. Furthermore, there is nothing on the immunization record to indicate that the applicant was in the United States at those times. Finally, the record contains a gap of five years between immunizations. For these reasons, this immunization record can be given minimal weight as evidence of the applicant's continuous residence;
- Two statements from [REDACTED], the applicant's former landlady. In a fill-in-the-blank "affidavit" form notarized on April 6 in an unknown year, Ms. [REDACTED] indicates that the applicant was a tenant from May 1981 to June 1989. In a letter notarized on August 17, 1990, [REDACTED] states that she leased the applicant a bedroom in her home from June 1981 to June 1989. As the owner of the house, [REDACTED] fails to submit corroborating evidence of the applicant's residence in that house, such as a lease or rent receipts, or in the alternative, an explanation of the payment arrangements that existed for the applicant. Lacking such relevant detail, the affidavit can be given only minimal weight as evidence of the applicant's continuous residence in the United States for the requisite period;
- A fill-in-the-blank form dated August 6, 1990, from [REDACTED] of La Purisima Catholic Church in El Modena, California. The form allows the affiant to fill in a statement that "[a]ccording to our records he/she has been attending our church on a regular basis since _____." [REDACTED] simply filled in "1981." This letter can be given minimal evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. 245a.2(d)(3)(i). Specifically, the letter does not explain the origin of the information given, nor does it provide the address where the applicant resided during the period of his involvement with the church. Instead, the letter refers generically to the church's "records" and provides the applicant's address at the time the letter is dated, not his address during the statutory period. Furthermore, the letter does not provide a specific date when the applicant first began attending the church or the frequency with which he attended. Given this lack of detail, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period;
- Five "Affidavit of Witness" forms, three of which were sworn to in February 1990, and signed by [REDACTED] and [REDACTED]. The form indicates that the affiant has personal knowledge that the applicant has resided in the United States in Orange, California. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): _____." [REDACTED]

added: "I met [REDACTED] and his [REDACTED] and son [REDACTED] in services church." [REDACTED] added: "I met [REDACTED] at a family party." [REDACTED] added: "I met [REDACTED] at a party Christmas." [REDACTED] added: "I met [REDACTED] at a private party."

These affidavits, prepared on a fill-in-the-blank form, contain minimal details regarding any relationship with the applicant during the requisite period. The affiants all fail to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than the city where he resided. Lacking such relevant detail, the affidavits can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period; and,

- An employment verification letter dated February 26, 1990, from [REDACTED] Equipment Rental. [REDACTED] states that the applicant worked for him for two weeks in April 1981 and then again that same year "just before the Christmas holidays as a casual labor with a masonry who worked on by block wall." Mr. [REDACTED] states that after this, the applicant checked in with him to see if he needed a full-time employee on his crew. He states that he used the applicant occasionally for minor repairs such as roof repairs, tree trimming, and stump removals. He states that he always kept the applicant in mind because he was a hard worker and that he put him on the payroll as soon as he was able.

This letter can be given little evidentiary weight as it fails to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, [REDACTED] does not provide the applicant's address at the time of employment, any periods of layoff, declare whether the information was taken from company records, or 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.

For the reasons noted above, these documents are not sufficient to establish the applicant's residence and presence in the United States for the requisite period. Given the limited weight given to the receipts and letters in the record, they are not sufficient to meet his burden that he entered the United States prior to January 1, 1982, and resided continuously here from before January 1, 1982, through May 4, 1988. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Furthermore, while the applicant has submitted numerous affidavits in support of his application, he has not submitted any credible contemporaneous evidence to establish his residence prior to 1984.

The record of proceedings contains other documents dated after May 1988. These documents all indicate physical presence after May 1988, and do not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before 1984 through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States without inspection in March 1981, and to have resided for the duration of the requisite period in California. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance on affidavits, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982, through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous unlawful residence in the United States as required for eligibility for adjustment to permanent residence status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is therefore, ineligible for permanent resident status under Section 1104 of the LIFE Act.

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