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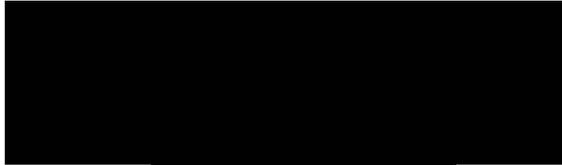
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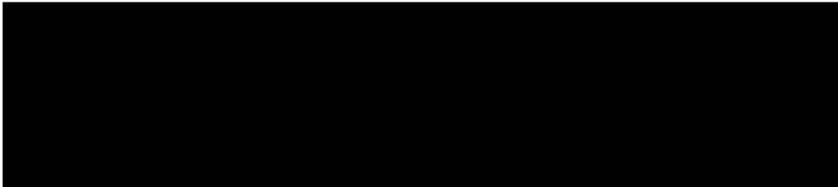
Date: **JAN 16 2008**

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).

IN BEHALF OF APPLICANT:



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. 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.

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, Boston, on June 28, 2006. The decision was appealed to the Administrative Appeals Office (AAO). The AAO rejected the appeal on October 5, 2007, finding that it had been untimely filed. The applicant, through counsel, has now submitted proof that the appeal had been timely filed with the Providence Field Office of Citizenship and Immigration Services (CIS), and that CIS had inadvertently failed to document the actual date of filing on the applicant's Form I-290B, Notice of Appeal to the AAO. In response, the AAO has sua sponte reopened its prior decision.¹ The AAO's decision of October 5, 2007 will be withdrawn. The appeal will be dismissed.

The director determined that the applicant had not provided evidence to adequately establish that he resided in the United States in a continuous, unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act, or that he had been continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(C) of the Life Act. The director concluded that the evidence submitted was either fraudulent (based on a record search that failed to show the existence of a jewelry business or certain addresses) or lacked probative value, noting that some affiants referred to the applicant as "Wilmar" instead "Wilman," his true name.

On appeal, the applicant, through counsel, asserts that the director's decision is contrary to the facts and the law; that the documentation submitted regarding employment is valid, and CIS's search of corporate records is of little probative value as the jewelry shop in question was not incorporated; and the failure to consider "the voluminous submission on behalf of the applicant is a denial of due process." On July 25, 2007 the applicant requested 60 days from submission of the Notice of Appeal to submit a brief; however, no additional filings have been received as of the date of this decision, and the record is, therefore, considered complete. The AAO has reviewed all of the evidence and has made a de novo decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.²

An applicant for permanent resident status under section 1104 of the LIFE Act (Life Legalization applicant) 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 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 period, is admissible to the United States, and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. The

¹ Motions to reopen a proceeding or reconsider a decision on an application for permanent resident status under section 1104 of the LIFE Act are not considered. 8 C.F.R. § 245a.20(c). The AAO may, however, sua sponte reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

² The AAO reviews each case de novo as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

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 states that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 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 the applicant’s own testimony. 8 C.F.R. § 245a.13(f).

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 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 June 5, 1991.³ On May 13, 2002 the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application).

³ The record indicates that both the director and counsel for the applicant, as well as the AAO on appeal, may have erroneously concluded that the applicant had by means of this Form I-687 applied for temporary resident status, either pursuant to the terms of the CSS/Newman Settlement Agreements or otherwise. The AAO notes that no such separate application is contained in the record. The Form I-687 submitted in support of the applicant’s 1991 request for class membership, however, is a part of the record and, along with all accompanying documentation, has been reviewed and considered by the AAO in deciding this appeal.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States since a date prior to January 1, 1982 through May 4, 1988. The applicant has provided the following evidence relating to the requisite period:

- An envelope postmarked in Bogota, Colombia, on February 10, 1981 addressed to the applicant at [REDACTED] Pawtucket, RI, from [REDACTED] at an address in Medellin, Colombia. On his Form I-687, the applicant listed his address from 1981 to 1984 as [REDACTED], Central Falls, RI; and his address from 1985 to 1988 as [REDACTED] in Pawtucket. The applicant also indicated that his first entry into the United States was in July 1981. Given these inconsistencies, the envelope cannot be given any weight as evidence of the applicant's presence or residence in the United States in 1981.
- A letter "To Whom It May Concern" dated January 12, 1990 from [REDACTED], Loan Officer of Dexter Credit Union in Central Falls, Rhode Island. The letter states that [REDACTED] of Central Falls is a member of the Credit Union and his account was opened on December 3, 1985. As noted by the director, [REDACTED] is not the applicant's name, and CIS records show someone by that name who resided in Central Falls. It is not clear, therefore, that the letter refers to the applicant, whose name is "Wilman." It may simply be a matter of a misspelling, however. In this case it appears that [REDACTED] meant to refer to [REDACTED] as an affidavit on his behalf from her is also included in the record. However, the letter lacks probative value, as it is not notarized and is not accompanied by any official records. The AAO notes that other documents in the record also refer to "[REDACTED]," including utility receipts sent to the applicant at an address he listed. Those receipts, although not relevant as they are dated after the requisite period, are credible evidence of residence and indicate that the applicant's name may have been inadvertently misspelled more than once.
- A "Partial Payment Receipt, dated July 11, 1990 from the city of Central Falls to the applicant; and a money order for the relevant amount dated July 2, 1990. The receipt notes that \$21.90 was received from the applicant "to be applied on tax of 1988." This receipt indicates that the applicant made a payment to the City Treasurer and Tax Collector in 1990 that was applied to 1988 taxes; the receipt does not state the basis for the taxes. It is not evidence of the applicant's presence or residence in the United States other than at the time the payment was made in 1990.
- Five affidavits from acquaintances, all dated in 1989 or 1990 and containing almost identical statements. All of the affiants claim to have known the applicant since 1981. Four of the five add that he is honest and/or hardworking. Two mistakenly refer to him as "[REDACTED]." Two give their places of residence as New Jersey, while the others state that they reside in Rhode Island. The affiants fail to provide details regarding their claimed friendships with the applicant or to indicate any personal knowledge of the applicant's entry to the United States, his places of residence or the circumstances of his residence over the prior eight or nine years of their claimed relationships. There is no evidence that the affiants resided in the United States during the requisite period and no details that would lend credibility to their statements.

- An affidavit, dated only 1990, from [REDACTED], who had identified herself as the Loan Officer of Dexter Credit Union in the letter noted above. [REDACTED] states that she has known the applicant since August 1981 when he entered the country and began working at "[REDACTED]" Jewelry Co. as a polisher apprentice and later became a full time polisher. The information regarding date of entry and place of employment is consistent with the applicant's information provided on his Form I-687, although there is a one-month time difference and the affiant lists his employer as "[REDACTED]." Ms. [REDACTED] does not provide any address or contact information for herself and fails to note how she met the applicant or had knowledge of his entry into the United States, which he claims was through Phoenix, Arizona; she does not state any place of residence for the applicant from 1981 to 1990 other than that he is "of Central Falls, Rhode Island." [REDACTED]'s submission of two entirely different statements, one claiming knowledge of the applicant since 1981 and the other reporting on his credit union membership since 1985, absent any details of her relationship with the applicant, raises doubts as to her credibility.
- An affidavit dated January 11, 1990, from [REDACTED] and [REDACTED], of [REDACTED], Central Falls, RI. They state that they are from Colombia and add, "We testify tha[t] we [have] known [the applicant] since July 20, 1981. To Present time, at [REDACTED] Central Falls R.I. He, lived with us since, 1981 to 1984 [when] he moved to the [REDACTED] family. We know he is a very nice person and hard worker." On his Form I-687, the applicant claimed to have entered the United States, through Phoenix, Arizona, on July 20, 1981; and he indicated that he lived at [REDACTED] from 1981 to 1984, which is confirmed by the affiants. There is no indication, however, that the affiants were in Phoenix on the date indicated or that they had any personal knowledge of his entry into the United States or subsequent move to Rhode Island. There is no evidence that the affiants resided in the United States during the requisite period and no details of any relationship that would lend credibility to their affidavit.
- Two additional affidavits from [REDACTED]. The first is dated January 16, 1990, stating that the affiant, "owner of the building on [REDACTED] and [REDACTED], Central Falls declare[s] that [the applicant] is a tenant here since July 1988." If he is referring to the applicant's residence at [REDACTED], his statement is consistent with the applicant's claim on his Form I-687 that he lived there from 1988 to 1990; but as the owner of [REDACTED] as well, his statement contradicts the applicant's claim of residence there from 1981 to 1984. As July 1988 is after the requisite period of residence for a LIFE Legalization applicant, confirmation of residence as of that date has limited relevance. The second affidavit is dated May 31, 1990, stating that the applicant traveled with the affiant by car to Mexico on June 12, 1987. [REDACTED] states that he was driving to Mexico and the applicant asked for a ride to get a plane in Mexico to go to Colombia to visit his mother who was ill. The statement is consistent with the applicant's claim that he visited his mother in Colombia from June 12, 1987 to July 28, 1987, although the date of travel by car could not be the same as the date the visit to Colombia began. The affiant does not state his reason for driving from Rhode Island to Mexico or provide any other detail that would lend credibility to this statement.
- An affidavit dated January 11, 1990 from [REDACTED] and [REDACTED] of Pawtucket, Rhode Island. They state that they are from Colombia and add, in virtually the same language as the affidavit by the

“We testify that we [have] known [the applicant] since 1981 to present time, at [REDACTED], Central Falls R.I. We [met] him at a family dinner; we know he is a very nice person and a hard worker. He also lived with us a few months in [REDACTED] Pawtucket, RI, in the year of 1984.” The affidavit is consistent with the information provided by the affiant on his Form I-687 that he resided at [REDACTED] in Pawtucket from 1984 to 1985. As noted above, the duplicate language in this affidavit detracts from its credibility, and, as with the affidavit from the [REDACTED] it does not indicate that the affiants had any personal knowledge of the applicant’s entry into or residence in the United States other than stating his address for four months. There is no evidence that the affiants resided in the United States during the requisite period and no details of any relationship that would lend credibility to their affidavit.

- An affidavit dated January 16, 1990 from [REDACTED], of [REDACTED] in Pawtucket, Rhode Island. He declares that the applicant lived with him from January 12, 1985 to July 1988, when the applicant moved to [REDACTED] in Central Falls. This is consistent with the affiant’s claim on his Form I-687 that he resided at [REDACTED] in Pawtucket from 1985 to 1988; it is also consistent with the affidavit from [REDACTED], above, regarding the applicant’s move to [REDACTED] in July 1988.
- Two form affidavits dated June 5, 1991 and May 10, 1991, respectively, from [REDACTED] and [REDACTED], both indicating they reside in Westbury, New York. Both affiants list the applicant’s addresses in Rhode Island during the requisite period consistent with the addresses provided by the applicant on his Form I-687. [REDACTED] lists four of the applicant’s addresses, covering 1981 to 1991 and adds, “I [met the applicant] through a good friend who introduced him to me. We became good friends and have [kept] in touch ever since.” [REDACTED] lists two of the applicant’s addresses, covering 1985 to 1991, and adds, in almost duplicate language, “We [met] in a family reunion. We became really good friends and to this day we still keep in touch.” The affiants, residing in New York, do not explain how they knew of the applicant’s presence in Rhode Island during the requisite period; they do not indicate any personal knowledge of the applicant’s entry into or residence in the United States other than stating his addresses. There is no evidence that the affiants resided in the United States during the requisite period and no details of any relationship that would lend credibility to their affidavits.
- Two affidavits regarding the applicant’s employment during the requisite period. These are from [REDACTED] Manager of Diversified Jewelry in Providence, Rhode Island, dated February 16, 1991; and from [REDACTED], who refers to himself as the owner of [REDACTED] o. in Providence, Rhode Island. The affiants confirm the information provided by the applicant on his Form I-687 regarding dates and places of employment. [REDACTED] states that the applicant was employed by Diversified Jewelry from December 10, 1985 to May 15, 1989, at an hourly wage of \$3.25, based on information from company Payroll/Personnel records. [REDACTED] states that the applicant was employed by [REDACTED] e from 1981 to 1984 and that all records were destroyed in a fire. By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant’s address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records;

and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer's willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). Neither affidavit meets these regulatory standards. They are not on letterhead and do not provide the applicant's address; the affiants do not offer to either produce official company records or to testify regarding unavailable records. There is no official indication that the "manager" or "owner" is connected to the relevant business; there are no telephone numbers included for verification of the information; and the director has raised questions, which have not been answered by the applicant, regarding the validity of the business addresses. These letters can be accorded only minimal weight as evidence of residence during the requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative as evidence of the applicant's residence and presence in the United States for the requisite period. Although there is "voluminous" evidence, as stated by counsel, all 15 of the affidavits in the record that refer to the relevant years are bereft of sufficient detail to be found credible or probative; not one affiant indicates credible personal knowledge of the applicant's entry to the United States in 1981 or credibly attests to his presence in the United States from 1981 to 1985. In some cases the affiants provide inconsistent and contradictory information regarding the applicant's claimed dates and places of residence. The duplicative language, use of forms and the failure to meet statutory standards also detract from the probative value of some of the affidavits.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in July 1981 through Phoenix and to have resided for the duration of the requisite period in Rhode Island. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record; some credible evidence of residence beginning in 1985 is included in the record, but none of the evidence submitted supports a conclusion that he resided in the United States before then.

The absence of credible and probative documentation to corroborate the applicant's claim of entry and continuous residence for the requisite period seriously detracts from the credibility of his claim. 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 lack of credible supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident 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.