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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

MSC 02 252 61923

Office: GARDEN CITY, NEW YORK

Date: **JUL 29 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 Garden City, New York. 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 applicant has provided sufficient evidence to establish that he has resided in the United States continuously in an unlawful status since 1981.

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 Ecuador who claims to have lived in the United States since February 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 9, 2002. As evidence of his residence in the United States during the years 1981-1988 the applicant submitted a series of letters and affidavits which had originally been filed in 1990. They included the following:

A letter from the manager of Macori’s Service Center in Brooklyn, New York, dated November 2, 1989, stating that the applicant had been employed since September 1987 as a mechanic with a salary of \$250.00 per week.

- A letter from the president of Professional Automotive Inc. in Brooklyn, New York, dated October 10, 1990, stating that the applicant had been employed since October 1987 as a mechanic with a weekly salary of \$350.00.
- A letter from the manager of [REDACTED] New York, dated October 16, 1990, stating that the applicant was employed as a mechanic from March 1981 to July 1987, and was paid a salary of \$180.00 per week.

- A letter from the Assistant Pastor of St. Michael's Church in Brooklyn, New York, dated September 19, 1990, stating that the applicant was a member of the church from March 1981 to December 1987, and that he attended services regularly.
- Two affidavits from [REDACTED] dated October 18, 1989 and November 5, 1990, respectively, stating that the applicant lived with him at his apartment located at [REDACTED] 1981 to May 1986, and then moved to [REDACTED] New York, from May 1986 to December 1988 (according to the first affidavit) or December 1987 (according to the second affidavit).

An affidavit from [REDACTED] dated November 15, 1990, stating that the applicant had been living with him at his apartment located at [REDACTED] since December 1987.

Affidavits from [REDACTED] a resident of New York, New York, and from [REDACTED] a resident of Brooklyn, New York, both dated October 17, 1990, stating that they know the applicant resided at the following addresses during the 1980s: [REDACTED] 1981 to May 1986, [REDACTED] May 1986 to December 1987, and [REDACTED] from December 1987 to 1990.

- A Letter from Lutheran Medical Center in Brooklyn, New York, dated November 14, 1990, stating that the applicant was seen at their Family Health Center on the following dates: December 11, 1981, October 25, 1982, April 8, 1984, February 20, 1985; May 16, 1986 and September 2, 1987, for regular check ups.

Copies of medical receipts from Brook Medical and Dental Center, in Brooklyn, New York, dated August 15, 1986 and April 10, 1987, and from Lutheran Medical Center, dated May 16, 1986, identifying the applicant as the patient.

- A letter from the [REDACTED] of Ecuatoriana Airline dated September 18, 1990, stating that the applicant was a passenger on one of their flights from JFK Airport in New York on August 2, 1987.

Various retail receipts with hand written notations of the applicant's name, and sometimes a United States address, dated 1981 through 1988.

On September 25, 2007, the director issued a Notice of Intent to Deny (NOID), citing 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.

The applicant failed to respond to the NOID, and on November 2, 2007, the director issued a Notice of Decision denying the application based on the grounds stated in the NOID.

On appeal, counsel asserts that the director did not properly consider the substantial evidence submitted by the applicant. Counsel reiterates his claim that the applicant has submitted sufficient credible evidence to establish that he has been residing in the United States since before January 1, 1982. The applicant offers some explanations for the evidentiary inconsistencies cited in the NOID and submits an additional affidavit from [REDACTED] owner of Concord Collision Inc., in Brooklyn, New York, dated November 1, 2007, stating that the applicant worked for his business from February 1981 to 1988 on a part-time basis.

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 letter from [REDACTED] dated November 1, 2007, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did 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 this employment in the Form I-687 he filed in 1990, or anywhere else in the record, until this current appeal to his Form I-485 application under the LIFE Act. The letter was not supplemented by any earning statements, pay stubs, or tax records demonstrating that the applicant actually had the job during any of the years claimed. Additionally, the letter was not accompanied by any documentation from [REDACTED] of his own identity and presence in the United States during the 1980s.

The employment letters from the manager of Macori's Service Center, dated November 2, 1989, from the president of Professional Automotive Inc., dated October 10, 1990, and from the manager of [REDACTED] dated October 16, 1990, also failed to comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i). None of the letters declared whether the information was taken from company records, or indicated whether such records are

available for review, and none of the letters were supplemented by any earning statements, pay stubs, or tax records demonstrating that the applicant actually had those mechanic jobs during any of the years claimed. While [REDACTED] of Professional Automotive Inc., listed the applicant's residence during the period of employment, [REDACTED] & Repair did not, and the applicant's residence listed by [REDACTED] of Macori's Service Center is inconsistent with information provided on the Form I-687 the applicant filed in 1990. On the Form I-687 the applicant stated that he resided at [REDACTED], New Jersey, from December 1987 to 1990, contrary to [REDACTED] information that the applicant resided at [REDACTED] as of November 1989. On his Form I-687, the applicant listed [REDACTED] his place of residence in the years 1981-1986.

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.*

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

As for the letter from the Assistant Pastor of St. Michael's Church, it does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter does state the address where the applicant resided during the period of membership, does not indicate how and when Father [REDACTED] met the applicant, and whether the information about his membership and church attendance during the period stated was based on Father [REDACTED] personal knowledge, St. Michael's Church records, or hearsay. Since Father [REDACTED] letter does not comply with sub-parts (D), (E), (F) and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits by [REDACTED] dated October 18, 1989 and November 5, 1990, by [REDACTED] dated November 15, 1990, and by [REDACTED] dated October 17, 1990, provide some basic information about the applicant, such as the addresses he claims in the United States during the 1980s, but few details about the applicant's life in the United States and his interaction with the affiants 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 medical receipts from Brook Medical and Dental Center, dated August 15, 1986 and April 10, 1987, and from Lutheran Medical Center, dated May 16, 1986, have handwritten notations of the applicant's name as the patient but have no stamps or other official markings to authenticate those dates. Nor do the receipts identify the applicant's address. Even if the AAO accepted the receipts as credible evidence of the applicant's residence in the United States in 1986 and 1987, they would not establish the applicant's continuous residence in the United States before 1986, much less before January 1, 1982, as required for legalization under the LIFE Act.

The fill-in-the-blank letter from the Medical Records Department of Lutheran Medical Center, dated November 14, 1990, indicating that the applicant was seen at the Family Health Center from December 1981 through September 1987, appears to be fraudulent since the dates of service are typed in while the signature of the "R.R.A." at the bottom of the document is clearly photocopied. The letter did not identify the applicant's address, and is not accompanied by any other official hospital records to authenticate the dates noted on the letter.

The letter from the Station Manager of Ecuatoriana Airline, dated September 18, 1990, stating that the applicant was a passenger on flight # [REDACTED] on August 2, 1987, is of little probative value as evidence of the applicant's residence in the United States from January 1, 1982 through May 4, 1988 because it did not identify any address for the applicant.

The various retail receipts dating from 1981 to 1988, are all handwritten with no stamps or other official markings to authenticate the dates they were written. Some of the receipts do not identify the applicant's complete name and address. Furthermore, most of the receipts date from the mid- and late-1980s, and only one dates as early as 1981. Given these substantive deficiencies, the receipts are not persuasive evidence of the applicant's continuous 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.