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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED]
MSC 03 249 62364

Office: DALLAS

Date: JUN 03 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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 District Director, Dallas, Texas, 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 district director denied the application, finding that the applicant failed to establish eligibility to adjust his status to that of a lawful permanent resident under the LIFE Act. The director found that it was not probable that the applicant entered the United States prior to January 1, 1982, and maintained residence through May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant submitted credible and verifiable evidence that he was continuously and physically present in the United States since before January 1982 through May 4, 1988. Counsel asserts that the affidavits and employment letters are sufficient to meet the applicant's burden of proof by a preponderance of the evidence.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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).

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 record reflects that on June 6, 2003, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On May 3, 2004, the applicant appeared for an interview based on his application. The interviewing officer issued the applicant a Request for Evidence (RFE), requesting that the applicant submit additional documents establishing his presence in the United States before January 1, 1982, through May 4, 1988. In response, the applicant submitted two letters from former employers.

On April 11, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application, finding that the applicant had not established that he entered the United States before January 1, 1982. The director noted that the affidavits attesting to his dates of employment conflicted with each other. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case. In response, counsel submitted a brief; an updated statement from the applicant; an updated letter from Raul Martinez, and an updated letter from a former employer.

On June 21, 2006, the director denied the application, finding that the applicant failed to establish eligibility to adjust his status to that of a lawful permanent resident under the LIFE Act. The director noted that the applicant entered the United States on December 20, 1999, as a B-2 visitor. The director also noted that the applicant was married on February 13, 1999, in Nuevo Leon, Mexico and that he listed his address in Nuevo Leon on his marriage license. The marriage license also listed the applicant’s occupation as waiter. The director found that it was not probable that the applicant entered the United States prior to January 1, 1982, and maintained residence through May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant submitted credible and verifiable evidence that he was continuously and physically present in the United States since before

January 1982 through May 4, 1988. Counsel asserts that the affidavits and employment letters are sufficient to meet the applicant's burden of proof by a preponderance of the evidence.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States before January 1, 1982; his continuous residence from January 1, 1982, through May 4, 1988; and, his continuous physical presence in the United States during the requisite period.

The record of proceeding contains the following evidence relating to the requisite period:

Employment Letters

- A letter dated June 24, 1990, from [REDACTED] Mr. [REDACTED] stated that the applicant worked for Members Building Maintenance Corp. from February 14, 1985, to July 24, 1988;
- A letter dated July 14, 2004, from [REDACTED] of Members Building Maintenance Corp. Ms. [REDACTED] states that the applicant brought the letter written by Joe Paz to her, asking that she write a letter verifying that he worked for them from 1985 to 1988. She states that they do not have payroll records going back to that date. She states that [REDACTED] worked as a Division Manager for them in the past. She states that it may well be that the applicant worked under the supervision of Mr. [REDACTED] from 1985 to 1988;
- A letter dated April 29, 2006, from [REDACTED]. Mr. [REDACTED] states that the applicant worked for him part-time from 1981 - 1988. Mr. [REDACTED] states that the applicant did not work for him full-time because he worked for Concrete Finishers Unlimited; and,
- A fill-in-the-blank affidavit notarized on August 23, 1990, from [REDACTED] of Concrete Finishers Unlimited. Mr. [REDACTED] listed the applicant's position as labor and stated that the applicant's duties were installing and removing concrete. He stated that the applicant was employed from from November 1981 to January 1985.

These letters are of limited probative value and can be given little evidentiary weight because they lack sufficient detail as required by the regulations. Specifically, the information provided by [REDACTED] could not be verified. Ms. [REDACTED] does not confirm the information provided by Mr. [REDACTED]. Even if the two letters together established that the applicant worked for this company between 1985 and 1988, they do not establish that he continuously resided here and was continuously physically present here during that time. The letter from [REDACTED] does not provide the applicant's address at the time of employment. It does not state if the applicant worked part-time or full-time and does not show any periods of layoff. It does not state if the applicant

worked continuously or sporadically from 1985 to 1988. It does not list the applicant's duties. It also does not establish his physical presence or residence from before January 1, 1982, through January 1985. The letters from [REDACTED] and [REDACTED] do not list the applicant's address during his employment with them and do not list any period of layoffs. Finally, none of the letters declare whether the information provided 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.

Affidavits

- A notarized letter dated July 25, 2004, from [REDACTED], stating that he had known the applicant since February 1981 to the present. He stated that he met the applicant for the first time at Roger Meyer Cadillac on JBJ and Welch in Dallas, Texas. He stated that he knew the applicant got into the United States by crossing illegally and that he was living at [REDACTED], in Garland, Texas. Mr. [REDACTED] stated that the applicant was a very hardworking and loyal person and that he moved to his brother's house in February 1994 to 2001 at [REDACTED], in Dallas, Texas;
- A fill-in-the-blank affidavit dated April 24, 2004, from [REDACTED], the applicant's friend and former roommate. He states that he has known the applicant since April of 1985. He states that he met the applicant when the applicant moved in with him and his brother to an apartment in Dallas, Texas. He states that when he first got here, the applicant worked for the same landscaping company he was working for and got paid \$4 an hour. He states that the applicant is the brother of his son's godfather and that he sees him at least once a week;
- A fill-in-the-blank affidavit notarized on August 26, 1990, from [REDACTED], the applicant's brother. Mr. [REDACTED] stated that he and the applicant lived together from February 1981 through the date the letter was written and that the contracts were in [REDACTED]'s name;
- A fill-in-the-blank affidavit notarized on April 28, 2006, from [REDACTED], the applicant's friend. Mr. [REDACTED] states that he met the applicant in 1981 during a job to pour cement for a patio at his house in Farmer's Branch and that the applicant lived at [REDACTED], Farmers Branch, Texas. He states that he and the applicant became friends and would visit each other once a month;
- An affidavit from [REDACTED] dated August 3, 2006. Mr. [REDACTED] states that he has known the applicant for many years. He states that he met the applicant in Garland, Texas, and that the applicant lived there from February 1981 to March 1986.

These affidavits are not sufficiently detailed and are of little probative value, and therefore, can be given little evidentiary weight as evidence of the applicant's residence and presence in the United States for the requisite period. These affidavits suggest that the applicant was in the United States for the requisite time period, but lack any details that would lend credibility to the statements. In addition, there is no evidence in the record that the affiant resided at the addresses listed as claimed. They also fail to provide details regarding their claimed relationship with the applicant for over 15 years that would lend credibility to their statements. They, thus, have minimal weight as evidence of the applicant's residence at the noted address from 1981 through 1984. Regarding the applicant's claimed entry into the United States before January 1, 1982, other than one receipt for a purchase made in December 1981, without any indication of the applicant's address, there is no statement by anyone who claims to have personal knowledge of such entry. The duplicative language, use of forms and the failure to meet statutory standards also detract from the probative value of the affidavits.

Although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The record of proceedings contains various other documents, including an undated work letter from [REDACTED], of Servco Commercial Cleaning Services, that states that the applicant worked for Servo from July 1988 to the date the letter was written; the biographical page of the applicant's Mexican Passport, issued on December 9, 1997, in Monterrey, Mexico; and a B1/B2 multiple-entry visitor's visa, issued on December 7, 1999, at the U.S. consulate in Monterrey, Mexico. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988. In fact, even though the passport and visa were issued after the required statutory period, they indicate that the applicant was living in Mexico, not in the United States. The Immigration and Nationality Act (INA) requires that any individual applying for a B1/B2 non-immigrant visa establish, to the satisfaction of the consular officer, that he has residence in a foreign country which he has no intention of abandoning and is visiting the United States temporarily for business or temporarily for pleasure. *See* INA § 214(b) and INA § 101(a)(15)(B). The applicant did not explain in the response to the NOID or on appeal how he was issued a temporary, non-immigrant visitor's visa in 1999 if he had indeed been residing in the United States since prior to January 1, 1982.

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 in February 1981, near Brownsville, Texas, and to have resided for the duration of the requisite period in Texas. 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.

Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is 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.