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

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FILE: [REDACTED]
MSC 02-078-64104

Office: MIAMI DISTRICT OFFICE (TAMPA)

Date: JUN 11 20

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).

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting District Director, Miami, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act on December 3, 2005. That decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined in a Notice of Intent to Deny (NOID), dated August 29, 2003, that the applicant had not provided credible evidence to 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. The director noted that the documents submitted by the applicant and the applicant's statements included numerous discrepancies regarding where he resided at various dates and that the applicant failed to explain how he entered the United States in 1981 at Boston without inspection. In response, the applicant submitted additional affidavits and explained that he entered the United States from Canada on November 19, 1981 by foot and was given a ride to Boston. He also explained that although he had moved to Miami, he briefly resided from June to July 1982, in Haines City, Florida, and an affiant had mistakenly provided contradictory evidence regarding those dates of residence. The director subsequently denied the application, finding that the applicant had failed to overcome the grounds of denial as stated in the NOID.

On appeal, the applicant asserts that he has provided credible evidence of residence in the United States since January 1, 1982 and that he "has obtained additional evidence from an individual named [REDACTED] who provided [the applicant] a ride near the US Canadian Border in the Fall of 1981." An affidavit from Mr. [REDACTED] was submitted with the appeal. 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.¹

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 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,

¹ 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).

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 record contains such evidence, including a copy of a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," submitted to the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services or CIS) on November 11, 1989; and a copy of his Employment Authorization Document which was issued on May 7, 1990. On December 17, 2001 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).

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. Although the applicant has provided numerous affidavits from claimed acquaintances and his own statements, he has failed to meet this burden.

The applicant has provided the following evidence relating to the requisite period:

- Two statements from [REDACTED] s. The first is an affidavit dated September 26, 2001 and was submitted with the applicant's I-485 LIFE Legalization Application; the second is a notarized letter to CIS dated September 15, 2003 and was submitted in response to the NOID. In the 2001 statement [REDACTED] s affirms under oath that the applicant lived with him during June and July, 1981 at [REDACTED] in Haines City, Florida, and that he has "always known [the applicant] to live in the U.S. since June of 1981." In his 2003 letter [REDACTED] states that the 2001 affidavit contained a typing error in the date and that the applicant lived with him in June and July, 1982, not 1981. Neither statement provides any information regarding how or where [REDACTED] met the applicant or any details

that would indicate personal knowledge of the applicant's residence in the United States from 1981 through 2001 as claimed. Moreover, [REDACTED]'s statements contradict the information the applicant provided on his 1989 Form I-687, in which he lists all of his residences in the United States since his first entry and indicates that his first residence was at [REDACTED], Miami Beach, Florida, where he resided from December 1981 to December 1987. The applicant reiterated this information in his own affidavits, dated November 16, 2001, including one affidavit in which the applicant states specifically that he resided at the Miami Beach address December 1981 until December 1982. Given these multiple contradictions, both by [REDACTED] and between [REDACTED] and the applicant, [REDACTED] statements cannot be given any weight as evidence of the applicant's residence in the United States during the requisite period.

- Two additional affidavits from residents of Haines City, Florida; one from [REDACTED], dated September 16, 2003, and another from [REDACTED] dated September 21, 2003. They both claim to have known the applicant "during the months of June and July, 1982" and that they have known him since that time and attest to his good character. The affiants do not state where the applicant was residing or provide any information regarding how or where they met the applicant or any details that would indicate personal knowledge of the applicant's residence in the United States from 1982 through 2003 as claimed. These affidavits cannot be given any weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED], dated September 12, 2003. He identifies himself as the President and CEO of KCI Original, Inc. and states that he has known the applicant since December of 1981, both professionally and personally. He does not state where the applicant resided when they met or afterwards. As with the above noted affidavits, lacking any mention of the applicant's residence in the United States or any details of the claimed relationship of over 20 years that would indicate personal knowledge of the applicant's residence, the affidavit cannot be given any weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] Pastor, dated September 24, 2003 and written on letterhead of St. Jude Maronite Catholic Church in Orlando, Florida. There is no accompanying identification document or any indication on the letterhead that the affiant has any connection to the church. Moreover, the letter states only that the applicant is married, a good worker and takes care of his work and his family. It does not refer to where and when the applicant resided in the United States. The letter has no weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] i dated February 3, 2003. The affiant identifies himself as the applicant's brother and states that the applicant resided from November 6, 1986 through May 4, 1988 at [REDACTED] in Miami, and that the affiant was a student living at the Boston University dormitory during that time. Although there is a slight variation in the address, and the dates are limited to a specific time frame (apparently in response to a request for evidence regarding those dates) the affidavit does not contradict the applicant's statements that he resided at that address

from 1981 to 1987 and supports the applicant's claim that he resided in the United States during the time frame noted by the affiant.

- An affidavit submitted on appeal from [REDACTED], dated December 22, 2005. Mr. [REDACTED] provides his Florida Driver License showing a Haines City address. He claims to be a truck driver who "on or about the Fall 1981" met the applicant in a truck stop in Vermont near the U.S.-Canada border and gave him a ride to Boston, Massachusetts, and that he has kept in contact with the applicant and they remain friends. This affidavit supports the statement submitted by the applicant in response to the NOID, in which he explains how he entered the United States without inspection at Boston. With this explanation, however, both the applicant and the affiant contradict the applicant's original statement that he first entered the United States at Boston and not at the border with Canada. Moreover, there are no details regarding the continuing and long lasting relationship between the truck driver and the applicant that would lend credibility to [REDACTED]'s affidavit. Although Mr. [REDACTED] states that he has "personal knowledge that [the applicant] was in the United States on or before January 1, 1982," because of the contradictions and lack of detail, his affidavit can be afforded only minimal weight as evidence of the applicant's entry into the United States at that time.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have little or no probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Only one of the affiants indicates personal knowledge of the applicant's entry to the United States in 1981, but his statement contradicts the applicant's prior claim regarding where he entered. Other inconsistencies and the lack of relevant detail, described above, also detract from the probative value of these 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 December 1981, either at Boston or at the U.S.-Canadian border. On his 1989 Form I-687, he claims to have resided at one address in Miami since his arrival and throughout the requisite period, and he submitted his own affidavits for each year of his residence confirming that claim. Numerous inconsistencies in the record, however, including affidavits from friends noting that he resided in Haines City during the requisite period, diminish the credibility of his claim.

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. Moreover, although he attempted to explain why he provided contradictory dates and places of entry, and submitted supporting affidavits that mirrored his explanations, the evidence was found to have minimal probative value. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of his application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 contradictions 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.