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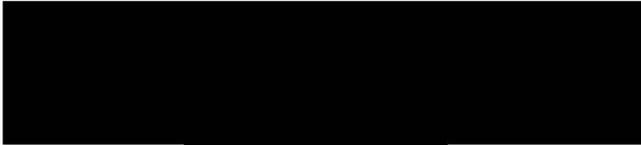
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 247 64261

Office: NEW YORK, NEW YORK

Date:

JUN 25 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).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status filed under the late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director), Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established 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 also denied the application based on the applicant's several prior criminal convictions, which include two felony convictions.

On appeal, the applicant asserted that he did maintain continuous unlawful residence and physical presence in the United States during the statutory periods. He also indicated that his attorney would have his prior criminal convictions cleared such that he might be eligible to adjust to permanent resident status.

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is not eligible to adjust to lawful permanent resident status under the LIFE Act. *See* 8 C.F.R. § 245a.18(a)(1).

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

*See also* 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

(1) 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.

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 states 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 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 to either request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

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 absence of contemporaneous evidence is not necessarily fatal to the applicant’s claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

Documentary evidence may be in the format prescribed by CIS regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and “state the employer’s willingness to come forward and give testimony if requested.” *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a “relevant document” under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.<sup>1</sup>

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

At issue in this proceeding is whether the applicant has submitted credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period and of establishing that he is eligible to adjust to lawful permanent resident status. Here, the applicant has failed to meet this burden.

The record indicates that on or near November 6, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On June 4, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains final court dispositions for several of the applicant's criminal convictions. The following summarizes the final court dispositions in the record:

1. On January 27, 1989, in a case first brought against the applicant on January 24, 1989 in the Municipal Court of Metropolitan Courthouse, Judicial District, County of Los Angeles, State of California, the applicant was convicted of driving a vehicle with 0.08 or more percent, by weight, of alcohol in his blood, a misdemeanor, defined at California Vehicular Code section 23152(b). Case No. [REDACTED]
2. On June 11, 1992, in a case first brought against the applicant on July 26, 1991 in the Municipal Court of San Pedro Courthouse, Judicial District, Los Angeles County, State of California, the applicant was convicted of the following: operating a vehicle under the influence of drugs, alcohol or a combination of drugs and alcohol, a misdemeanor, defined at California Vehicular Code section 23152(a); hit and run involving death or injury, a misdemeanor, defined at California Vehicular Code section 20001; and driving with a suspended license, a misdemeanor, defined at California Vehicular Code section 14601(a). Case No. [REDACTED].
3. On June 11, 1992, in a case first brought against the applicant on June 1, 1992 in the Municipal Court of San Pedro Courthouse, Judicial District, Los Angeles County, State of California, the applicant was convicted of the following: operating a vehicle under the influence of drugs, alcohol or a combination of drugs and alcohol, a misdemeanor, defined at California Vehicular Code section 23152(a); and hit and run involving property damage, a misdemeanor, defined at California Vehicular Code section 20002(a). Case No. [REDACTED].
4. On June 19, 1992, in a case first brought against the applicant on July 10, 1991 in the Municipal Court of Metropolitan Courthouse, Judicial District, County of Los Angeles, State of California, the applicant was convicted of driving a vehicle with 0.08 or more percent, by weight, of alcohol in his blood, a misdemeanor, defined at California Vehicular Code section 23152(b). Case No. [REDACTED]
5. In a case first brought against the applicant on May 25, 1994 in the Superior Court, South Judicial District, Los Angeles County, State of California, the applicant was alleged to have had all the prior convictions listed above and the following prior convictions: on January 4, 1993, convicted of driving a vehicle with 0.08 or more percent, by weight, of alcohol in his blood, defined at California Vehicular Code

section 23152(b); on June 17, 1993, convicted of operating a vehicle under the influence of drugs, alcohol or a combination of drugs and alcohol, defined at California Vehicular Code section 23152(a) and convicted of driving a vehicle with 0.08 or more percent, by weight, of alcohol in his blood, defined at California Vehicular Code section 23152(b); and, on July 21, 1993, convicted of driving a vehicle with 0.08 or more percent, by weight, of alcohol in his blood, defined at California Vehicular Code section 23152(b). There are no final court dispositions in the record for these alleged prior convictions of January 4, 1993, June 17, 1993 and July 21, 1993. On June 29, 1994, the instant court convicted the applicant of operating a vehicle under the influence of drugs, alcohol or a combination of drugs and alcohol, a felony, defined at California Vehicular Code section 23152(a); and convicted him of driving a vehicle with 0.08 or more percent, by weight, of alcohol in his blood, a felony, defined at California Vehicular Code section 23152(b). The court ordered the applicant to serve two years in state prison and to pay various fines. The applicant used the alias Amado Alvarado in these criminal proceedings. Case No. [REDACTED]

The record also contains documents that relate to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, including:

1. The Form I-687 signed by the applicant under penalty of perjury on November 6, 1990 on which the applicant stated at item 33 that he resided at [REDACTED], Los Angeles, California from July 1985 through December 1986.
2. Copies of envelopes postmarked during the statutory period sent by the applicant or to the applicant at an address in the United States, such as, envelopes postmarked August 14, 1986, September 9, 1986, October 22, 1986 and December 9, 1986 which list the applicant as having a return address in Mamaroneck, New York.
3. The affidavit of [REDACTED] dated November 1, 1990 on which the affiant attested that the applicant lived with him at [REDACTED] Los Angeles, California from July 1985 through December 1986.
4. The affidavit of [REDACTED] dated November 6, 1990 in which the affiant attested that the applicant worked for him at T & R Painting from August 1986 through November 1988. The affidavit is not amenable to verification in that it does not list an address or telephone number for T & R Painting, or for the affiant.
5. The Form I-687 on which the applicant stated at item 36 that he worked for T & R Painting from August 1986 through November 1988. The applicant failed to provide the address, the city or the state for T & R Painting on this form as requested in the instructions.

On September 9, 2006, the director issued a Notice of Intent to Deny (NOID) which indicated that the applicant had failed to demonstrate continuous residence in the United States during the statutory period. The director did not state what she found lacking in the applicant's evidence of residence. The director also listed several criminal convictions for the applicant. The list included two felony convictions and many

misdemeanor convictions. The record includes the final court dispositions for the two felony convictions and for seven of the misdemeanor convictions listed. The director stated that based on the applicant's criminal convictions and his failure to demonstrate continuous residence in the United States throughout the statutory period, she intended to deny the application.

The applicant did not reply to the NOID.

On October 25, 2006, the director denied the application based on the reasons set out in the NOID.

On November 24, 2006, the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), in this matter was received by the District Office, Los Angeles, California. On the Form I-290B, the applicant indicated that his attorney would file a brief or additional evidence within one-hundred eighty days. The record indicates that CIS never received such a submission. On June 3, 2008, this office sent counsel a facsimile transmission inquiring whether she had sent a brief or additional evidence, and requesting that a copy of such brief be sent by facsimile or mail to the AAO within five business days. Counsel sent a response dated June 5, 2008 in which she explained that she represented the applicant only in relation to the response to the NOID. She indicated that she did not represent the applicant on appeal, and that if the applicant made reference to her name on appeal, he did so without her knowledge. Thus, the AAO will analyze this matter based on the evidence in the record and this office will consider the applicant self-represented.

On appeal, the applicant indicated that his attorney was in the process of clearing the "discrepancies" in his criminal record. He also asserted that the record established that he had resided continuously in the United States throughout the statutory period. In addition, he submitted into the record affidavits relating to his residency in the United States during the statutory period.

The record includes conclusive evidence that the applicant has been convicted of two felonies and at least seven misdemeanors. Thus, the applicant is not eligible to adjust to lawful permanent resident status under the LIFE Act. *See* 8 C.F.R. § 245a.18(a)(1). Therefore, the appeal will be dismissed.

The director also indicated that the applicant had failed to establish continuous residence in the United States throughout the statutory period. However, the director did not identify the discrepancies in the applicant's evidence of continuous residence.

An application that fails to comply with the technical requirements of the law may be denied on those grounds by the AAO even if the Service Center or District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Thus, beyond the decision of the director, the AAO would note that the applicant stated on the Form I-687 that he resided continuously at the same address in Los Angeles, California from July 1985 through December 1986. After this, according to this form, he resided at other addresses in Los Angeles until the end of the statutory period. An affidavit in the record attests that the applicant worked continuously at T & R Painting from August 1986 through November 1988. The address for this company is not listed on this affidavit. The applicant also failed to list any address for T & R Painting on the Form I-687. However, given that the applicant claimed on the Form I-687 that he resided in Los Angeles during the entire period that he

worked for T & R Painting, the record implies that this firm is located in Southern California. Yet, included in the record are several letters postmarked during the statutory period that indicate that the applicant resided in Mamaroneck, New York during August through December 1986. This discrepancy casts doubt on the authenticity of the affidavit that purports to attest to the applicant's residence in Southern California throughout 1986, the authenticity of the affidavit that purports to attest to the applicant's employment at the same firm from August 1986 through November 1988, as well as on the authenticity of the rest of the evidence of record. This in turn casts doubt on the applicant's claim that he resided continuously in the United States throughout the statutory period.

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 the 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 (BIA 1988).

This office also finds that the various statements, affidavits and handwritten receipts in the record which purport to substantiate the applicant's residence in the United States throughout the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States during the statutory period, and that these documents are not probative in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act on this basis as well.

The applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act for the reasons stated above, with each considered as an independent and alternative basis for denial.

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