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U.S. Citizenship
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FILE: [REDACTED]
MSC 03 252 60516

Office: LAS VEGAS

Date: MAY 05 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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Las Vegas, Nevada, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant states that the director erred in denying the application. Counsel submits a brief and additional evidence, on appeal.

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.

In the Notice of Intent to Deny (NOID), dated August 15, 2005, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant stated at an interview on July 12, 2004, that he departed the United States to Mexico for two months in 1984 or 1985. However, as also noted by the director, the applicant indicated on his original Legalization application filed on August 8, 1991, that his only absence from the United States since his claimed entry in 1981, was in November 1987. The director granted the applicant thirty (30) days to submit additional evidence.

As noted by the director in his denial notice, the record does not reflect that the applicant responded to the NOID, and no additional evidence was received. In the Notice of Decision, dated December 12, 2006, the director denied the instant application based on the reasons stated in the NOID.

On appeal, counsel states that the applicant never received the NOID, and therefore, the applicant did not have an opportunity to respond. It is noted that the record reflects that on August 17, 2005, the director mailed the NOID, via certified mail return receipt requested, to the applicant at [REDACTED] Las Vegas, NV 89106, which was the applicant's address of record. However, the NOID was returned unclaimed. The record also reflects that the director subsequently mailed an initial denial notice to the applicant, via certified mail return receipt requested at the same address, [REDACTED], Las Vegas, NV 89106, which was claimed by the applicant on December 8, 2005.¹ The record does not reflect that the applicant filed a change of address notice. Therefore, the record must be considered complete.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period.

As noted by the director, in a Record of Sworn Statement in Affidavit Form, dated July 12, 2004, conducted in connection with the applicant's application, the applicant stated that he first entered the

¹ It is noted that the record does not reflect that the applicant was represented by counsel until April 2006 when counsel submitted a Notice of Entry of Appearance – Form G-28, with a request to reopen dated April 17, 2006.

United States in 1981, and that he left in 1984 or 1985 for one or two months. However, as also noted by the director, the record reflects that the applicant's passport was issued in Mexico on November 28, 1984, and the U.S. Consulate in Mexico issued a U.S. Visa to the applicant on March 6, 1985. It is noted that in order to receive such a visa, the applicant had to convince a U.S. consular official that he resided and worked in Mexico. Therefore, the applicant cannot establish that he resided in the United States in an unlawful status since January 1, 1982 through May 4, 1988.

As determined by the director, the applicant failed to submit sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. As also noted by the director, the discrepancies in the applicant's claimed entry date, and the record of evidence cast considerable doubt on the applicant's claim that he resided in the United States since 1981. The applicant, through his counsel, has submitted affidavits from individuals, and counsel asserts that these affidavits establish the requisite continuous residence in the United States. However, contrary to counsel's assertion, given the evidence of record in the form of the applicant's passport and the issuance of his U.S. visa, which confirms that the applicant was in Mexico for several months between 1984 and 1985, these affidavits are questionable. In addition, as noted above, the issuance of the applicant's U.S. visa is inconsistent with his claim that he resided in the United States in an unlawful status since 1981. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

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.