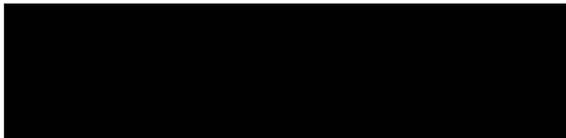




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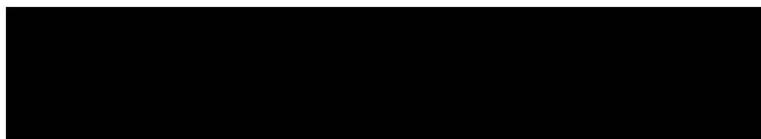
FILE:

MSC 01 327 60686

Office: NEW YORK

Date: **MAY 09 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 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.

for 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 New York City. 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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988 and that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal the applicant submits a letter and requests that his case be reconsidered.

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 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 23, 2001. At that time the record included the following documentary evidence of the applicant’s residence and presence in the United States during the 1980s:

- A letter from [REDACTED] of Ss. Joachim & Anne Church in Queens Village, New York, dated May 6, 1992, stating that the applicant had “regularly attended our church services for several years now.”

An affidavit from [REDACTED] of Jamaica, New York, dated December 21, 1992, stating that the applicant resided at [REDACTED] in Jamaica, New York, from April 1981 to May 1984; at [REDACTED] in New York City from May 1984 to March 1988; and at [REDACTED] in Queens Village, New York, from August 1988 to the present (1992).

- An affidavit from [REDACTED] of New York City, dated March 15, 1993, who stated that the applicant came to live in Jamaica, Queens, in April 1981, that he worked for Moratur Maintenance Corporation in Brooklyn almost four years, that in June 1985 he went to work for his brother’s construction company,

██████████'s" Construction, Inc., and that he was still employed there in 1993. Mr. ██████████ indicated that the applicant traveled to Ecuador in November 1987 for a few weeks when his mother was ill.

A letter from ██████████, the president of ██████████ Construction, Inc. in Queens Village, New York, dated March 2, 1993, stating that the applicant had been working for the company since June 1985 at a salary of \$300/week.

An affidavit from ██████████ of New York City, dated March 13, 1993, stating that the applicant made a 40-day trip to Ecuador from November 2 to December 12, 1987.

Four receipts bearing the applicant's name dated April 10, 1981, May 24, 1982, August 12, 1985, and August 16, 1986.

The applicant submitted another employment letter with his LIFE application from ██████████ Construction, Inc. of Queens Village, New York (evidently the successor name for ██████████ Construction, Inc.). The undated letter, signed by the accountant, ██████████ stated that the applicant had worked for the company "for the last 12 years" as a "general supervisor with a salary of \$1,000 weekly."

At his interview for LIFE legalization, on February 16, 2006, the applicant submitted three additional documents as evidence of his residence and physical presence in the United States during the 1980s, including:

A statement from ██████████ of Astoria, New York, dated February 7, 2006, that he had known the applicant since May 1981.

- A letter from ██████████ of Our Lady of Sorrows Church in Corona, New York, dated February 8, 2006, stating that the applicant was a registered parishioner and had been attending the church for over 20 years.
- A statement by ██████████ president of ██████████ Construction Corp. in Queens Village, New York, dated February 14, 2006, that the applicant had been working at his company since April 1985 as a masonry worker.

On August 10, 2006, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record did not establish the applicant's continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant submitted a letter indicating that he did not have any rental receipts, utility or telephone bills, or other primary documentation of his residence in the United States during the 1980s because he did not have a Social Security number and no such documents were issued in his name at that time. The applicant submitted two more affidavits, prepared in September 2006, from:

- [REDACTED], the widow of [REDACTED] who reiterated that the applicant lived with her and her husband in Jamaica, New York, from April 1981 to May 1984, and
- [REDACTED] who stated that the applicant (his brother) lived with the [REDACTED] in Jamaica, New York, from the spring of 1981 until 1984, and with him on 125th Street in New York City from 1984 to 1988.

On September 19, 2006, the director issued a Notice of Decision denying the application. The director found that the affidavits submitted in response to the NOID did not overcome the grounds for denial because they failed to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as required to be eligible for legalization under the LIFE Act.

On appeal, the applicant submits another affidavit in which he furnishes the phone numbers of the affiants [REDACTED] and [REDACTED], and also explains the circumstances of his trip to Ecuador in November 1987 and his return to the United States in December 1987.

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 from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988. The AAO determines that he has not.

The record contains four receipts dated in the 1980s. They include two merchandise receipts from Shopping Center in New York City and Bond Jewelry in Jamaica, Queens, New York, dated May 24, 1982 and August 16, 1986, identifying [REDACTED] or [REDACTED] as the customer. Neither receipt bears a date stamp or other authenticating mark from the store, however, and neither identifies the full name of, or any address for, the customer. The other two receipts, dated April 10, 1981 and August 12, 1985, are Spanish-language documents from Venegas Express and appear to identify [REDACTED] as the sender of a package from Brooklyn, New York, to a recipient in Azogues, Ecuador. Neither receipt bears a date stamp or other official mark from Venegas Express, however, and neither identifies any address for Mr. [REDACTED]. Moreover, the date of the earlier receipt appears to be the same date the applicant asserts that he initially entered the United States at San Diego, crossing the Mexican border from Tijuana. It seems clear that the applicant could not have been in San Diego and Brooklyn on the same day. For the reasons discussed above, the receipts are not persuasive evidence that the

applicant was a resident of the United States during any of the years at issue – 1981, 1982, 1985, or 1986.

The record contains two letters from clergy asserting that the applicant attended their respective churches. The earlier letter of May 6, 1992, from [REDACTED] of Ss. Joachim & Anne Church in Queens Village, New York, stated that the applicant had attended church services for several years, without further details. The subsequent letter of February 8, 2006, from [REDACTED] of Our Lady of Sorrows Church in Corona, New York, stated that the applicant had been attending that church for over 20 years, also without elaboration. The letters appear to be in conflict, unless the applicant was attending both churches at the same time. Neither letter specifies when the applicant's attendance began, and neither asserts that the applicant was a church member or attending services before January 1, 1982. Moreover, neither letter provides any information about where the applicant was living during the 1980s. For the reasons discussed above, the clergy letters have little evidentiary weight.

The record contains two letters from the applicant's brother, [REDACTED] in his capacity as president of a family-owned construction company, stating that the applicant has been an employee since 1985, as well as a letter from the company's accountant stating that the applicant had worked 12 years for the company. The employment letters do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i), however, because they did not provide the applicant's address at the time of employment, did not describe the applicant's duties in detail, did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. The undated letter from the company accountant also neglected to identify the applicant's exact period of employment. Moreover, the letters are contradictory with respect to the nature of the position. While the letter from the accountant calls the applicant a "general supervisor," the second letter from [REDACTED] describes him as a "mason worker." For the reasons discussed above, the employment letters likewise have little evidentiary weight.

Finally, the affidavits/letters from family and friends who assert that they knew and/or resided with the applicant in and around New York during the 1980s provide few details about the applicant's life in the United States aside from the bare essentials of where he lived and where he worked. They offer little or no information about the affiants' interaction with the applicant during the 1980s, and are not supplemented by any documentary evidence – such as photographs, letters, or other documents – of their relationship with the applicant. Furthermore, the information about the applicant's addresses provided by the applicant's brother and the [REDACTED] in 1992, 1993, and 2006 conflicts with the information provided by the applicant in the Form G-325, Biographic Information, he filed with his LIFE Act application in August 2001.¹

¹ The addresses provided by the affiants are consistent with those provided by the applicant in the earlier application for temporary resident status (Form I-687) he prepared in 1992 in connection with his application for class membership in the *CSS v. Thornburgh (Meese)* class action lawsuit. *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

In the Form G-325 the applicant stated that he resided at [REDACTED] in Queens Village, New York, from 1981 to 1988 and thereafter at [REDACTED] in Hollis, New York, from 1988 to 2001. The affiants stated that they resided with the applicant at completely different addresses during the time periods 1981-1984 and 1984-1988, and identified the 1981-88 address on the Form G-325 as the applicant's address from 1988 onward.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See 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 the applicant's remaining evidence. *See id.*

Based on the foregoing analysis – including the lack of credible evidence and the inconsistencies in the record – the AAO concludes that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, in accordance with section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.15(c)(1), and that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988, in accordance with section 1104(c)(2)(C)(i)(I) of the LIFE Act and 8 C.F.R. § 245a.16(b). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

The AAO notes that court documents in the record indicate that the applicant pled guilty in the Criminal Court of the City of New York, County of Queens, on two occasions – September 6, 1994 and January 29, 1996 – of violating section 509.1 of New York State's Vehicle and Traffic Law (VTL), which provides that “no person shall operate or drive a motor vehicle . . . unless he is duly licensed.” A violation of VTL section 509.1 is punishable by a fine or imprisonment for up to 15 days, or both. *See* VTL section 509.11. In any future proceedings before Citizenship and Immigration Services (CIS) these convictions must be taken into account.

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