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

L2



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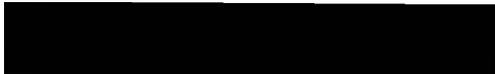
MSC 02 242 63164

Office: GARDEN CITY

Date:

OCT 31 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:



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.

A handwritten signature in cursive script, likely of Robert P. Wiemann.

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 Director, Garden City, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be dismissed.

The director denied the application because the applicant failed to demonstrate 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.

On appeal, the applicant asserts that all of the affidavits submitted as proof of his residence are credible. The applicant contends that the director “did not give any credit to these affidavits.”

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 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 periods, 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 stated 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, 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 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.12(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 applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," dated April 12, 1990. On May 30, 2002 the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (Form I-485).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant's claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

In connection with his Form I-485, the applicant was interviewed on April 26, 2004. During his interview, the applicant claimed to have entered the United States from Mexico in September 1980. In support of the applicant's claim of continuous residence, the record contains the following evidence relevant to the requisite period:

1. Two declarations from [REDACTED] and [REDACTED] Mr. [REDACTED] stated that the applicant worked for SAM & RAJ Construction Company from late 1981 to October 1986. Mr. [REDACTED] stated that the applicant worked for A.A. Jewelers from November 1986 to November 1989. By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant's address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer's willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). Both declarations fail to meet these regulatory standards. The declarations do not provide the applicant's address at the time of employment or his duties with the companies. Also, the affiants did not offer to either produce official company records or to testify regarding unavailable records. Thus, these

declarations can be accorded only minimal weight as evidence of residence during the requisite period.

2. An affidavit from [REDACTED], who stated that to his personal knowledge the applicant has resided in East Elmhurst, Queens, New York, from November 1981 to December 1989. The affiant also stated that he met the applicant at work in New York, approximately in November 1981, and since that time they have been good friends and roommates. The affiant failed to provide details regarding his claimed friendship with the applicant. Although he claims to have known the applicant since November 1981, he failed to note how or where he met the applicant, or where he worked when he met the applicant. Lacking relevant details, this affidavit has minimal probative value.
3. An affidavit from [REDACTED], who stated that he has known the applicant since January 1981 when the applicant rented out his basement room at [REDACTED], Bronx, New York. The affiant stated that the applicant resided at his house from January 1981 to May 16, 1981, and he later moved to Queens, New York. This affidavit is not consistent with the applicant's Form I-687. In his Form I-687, the applicant failed to indicate that he ever resided at the affiant's residence from January 1981 to May 1981. This discrepancy detracts from the credibility of the applicant's claim.
4. Two affidavits from [REDACTED] and [REDACTED]. Mr. [REDACTED] stated that he has known the applicant since December 1984, and that the applicant would frequently come to his fast food store. Ms. [REDACTED] stated that she has known the applicant since 1982, and that she went to his friend's garage frequently to repair her car and met the applicant "most of the time over there." Both affiants failed to provide details regarding their claimed friendships with the applicant or to provide any information that would indicate personal knowledge of the applicant's places of residence or the circumstances of his residence over the prior ten or twelve years of their claimed relationships. Lacking relevant details, these affidavits have minimal probative value.
5. An affidavit from [REDACTED], who stated that the applicant has resided in the United States from 1984 to the present. The affiant stated that he would see the applicant everyday when the applicant worked as a laborer at SAM & RAJ Construction Co. The affiant stated that he had his own construction company, Zahtash Construction Co., from 1984 to 2001. The affiant failed to provide details regarding his claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's places of residence or the circumstances of his residence over the prior seven or eight years of his claimed relationship. Lacking relevant details, this affidavit has minimal probative value.
6. An affidavit from [REDACTED], who stated that he has known the applicant since August 1986. The affiant stated that they worked together at A.A. Jewelers as salesmen, and now they have a very good friendship. The affiant failed to provide details regarding his claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's places of residence or the circumstances of his residence over the

prior seven or eight years of his claimed relationship. Lacking relevant details, this affidavit has minimal probative value.

7. An affidavit from [redacted] who stated that the applicant left the United States on October 18, 1987, and returned on November 24, 1987. The affiant stated that he took the applicant to the airport in New York when he departed. This affidavit is consistent with the applicant's Form I-687 and will be given some weight as evidence that the applicant departed the United States in 1987. However, the affiant failed to provide details regarding his claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's entry into the United States, his places of residence or the circumstances of his residence over the years of his claimed relationship. The affiant also failed to note when or where he met the applicant. Accordingly, this affidavit cannot be given any weight as evidence of the applicant's residence in the United States prior to 1987.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence in the United States for the requisite period. Although the record contains several affidavits, all nine of the affidavits in the record that refer to the relevant years are bereft of sufficient detail to be found credible or probative; not one affiant indicates credible personal knowledge of the applicant's entry to the United States in 1980 or credibly attests to his presence in the United States from his 1980 entry throughout the requisite period.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period.

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 discrepancy 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.