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FILE: [REDACTED]  
MSC 03 248 64099

Office: LOS ANGELES

Date: **SEP 02 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:

SELF-REPRESENTED

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:** On October 31, 2006, the District Director, Los Angeles, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant did not establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided continuously in the United States, prior to January 1, 1982, and through May 4, 1988. In a September 2, 2006, Notice of Intent to Deny (NOID), the director noted that the record of proceedings contains a sworn statement dated November 1, 1994, submitted by the applicant in which he states in his own writing and his own language that he departed the United States in 1982 and remained outside the United States until 1989, resulting in an absence of seven years. The director determined that during the statutory period, one or all of the applicant's exits exceeded 45 days or all of his absences exceeded 180 days. The director concluded that the applicant failed to establish that his return to the United States could not be accomplished within the time period allowed due to emergent reasons.

On appeal, the applicant asserts that during an interview on October 31, 1991, he stated orally that he left the United States on December 1, 1987, and returned on January 1, 1988. He states that he is unable to read or write and that the interviewing officer wrote out a statement, told the applicant to copy it, then had the applicant sign it. He states that he did all of this without knowing what the statement actually said. The applicant asserts that during his second interview, the officer was exceedingly rude and made several discriminatory remarks, told the applicant he was a criminal, and that he was like all other Mexicans who tried to take jobs away from Americans. The officer picked an individual unknown to the applicant out of the crowd and had that individual act as the applicant's interpreter. The officer had the interpreter write out a declaration and then had the applicant copy the statement and sign it. He submits five additional affidavits that address his continuous residence during the statutory period.

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 and 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 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 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 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). *See* 8 C.F.R. § 245a.15(b). 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). Affidavits indicating specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 record reflects that on June 5, 2003, the applicant submitted the current application. On January 27, 2006, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon 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.

The record of proceeding contains the following evidence relating to the requisite period:

Contemporaneous Evidence

- A 1981 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, issued to the applicant from Brights Nursery, Inc., indicating wages of \$1,475.68. Minimal evidentiary weight can be given to this document as evidence of the applicant's continuous residence in the United States from before January 1, 1982, through May 4, 1988. First, it contradicts information elsewhere in the record of proceedings, as the applicant did not list Brights Nursery as an employer on his Form I-687, Application to Register for Status as Temporary Resident. Second, it is not accompanied by pay stubs from the employer, and as such it is unknown when in 1981 was physically present or residing in the United States. Third, it would only serve to establish physical presence during an unknown period in 1981, and fails to establish the applicant's continuous physical presence in the United States during the requisite period.

#### Letters and Affidavits

- Five nearly identical "Affidavit of Witness" forms dated either June 13, or June 14, 2006. The forms, signed by [REDACTED] and [REDACTED], allow the affiants to answer various questions, including when and how they first meet the applicant. Mr. [REDACTED] states that he met the applicant at work in 1981. Mr. [REDACTED] states that his neighbor [REDACTED] introduced him to the applicant in 1982. Ms. [REDACTED] states that she met the applicant at her neighbor's house in 1982. Ms. [REDACTED] states that she met the applicant at a family gathering in 1981. Ms. [REDACTED] the applicant's aunt, states that she has known the applicant since his birth in 1963.

The affiants all provide the location where they were living and working when the applicant first came to the United States and where they were living and working between 1981 and 1988. They fail, however, to provide the location (s) where the applicant was living when they met him and from before January 1, 1982, through May 4, 1988. Although the affiants all attach photocopies of their photo identification documents and proof of their own continuous residence during the requisite period, they provide no corroborating contemporaneous evidence of the applicant's residence during that same period. While the affiants state that they know the applicant came to the United States before January 1, 1982, they provide no details that would indicate that they have any personal knowledge of the applicant's claimed entry in July of 1981.

The affiants' statements that they see and talk to the applicant at work or at various social gatherings and parties are insufficient to establish the applicant's continuous residence in the United States from prior to January 1, 1982, through May 4, 1988. Although [REDACTED] claims that the applicant lived with her from

1981 to 1988, her statement lacks any details demonstrating any personal knowledge of the applicant's residence in the United States during the requisite period, except his address. Lacking such relevant detail, the affidavits can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period;

- Two "Declaration of Witness" forms, both sworn to on March 30 1990, from [REDACTED] and [REDACTED]. These statements can be given minimal evidentiary weight and have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period, as they all lack sufficient detail. Regarding the applicant's claimed entry into the United States before January 1, 1982, neither of the affiants claims to have personal knowledge of such entry. Neither of the affiants provides specific dates of when they met the applicant, and neither of them provides any specific details of the circumstances of the applicant's residence in the United States; and,
- An "Affidavit" form sworn to on September 17, 1990. The form, signed by [REDACTED], first allows the applicant to attest to his departure from the United States on July 4, 1987, and his return, without inspection, on August 1, 1987. The affiant's name was then typed into the appropriate blank. The form language states that the affiant affirms that he knows the "above person, and affirm[s] that his departure and arrival in this country are as stated above are true." This statement can be given minimal weight as evidence of the applicant's continuous residence in the United States. [REDACTED] provides no details about his personal knowledge of the applicant's departure. In addition, this affidavit, while possibly confirming the applicant's absence in 1987, has limited relevance as evidence of his residence in the United States during the requisite period.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. The duplicative language and use of forms also detract from the probative value of the affidavits.

The record of proceedings contains other documents, including a certificate of completion for ESL and citizenship classes, and employment records and tax documents from various employers dated in 1990 through 2001. All of this evidence is dated after May 4, 1988, and does address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States in February 1981, near San Isidro, California, and to have resided for the duration of the requisite period in California. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, 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 applicant's reliance on affidavits alone, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982, through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States 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.