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FILE: [REDACTED]  
MSC 02 245 62988

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).

IN BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 February 16, 2007, the District Director, Los Angeles, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The decision is now on appeal to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director determined that the applicant had not provided evidence to adequately establish 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, or that he had been continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(C) of the Life Act. The director concluded that the evidence submitted either conflicted with information already in the file or lacked probative value, noting that affidavits written from acquaintances do not prove the issue of his physical presence in the United States prior to January 1, 1982.

On appeal, the applicant asserts that the director abused her discretion by failing to evaluate the sufficiency of all evidence submitted and failed to judge it in accordance to its probative value and credibility. He asserts that the documentation submitted is sufficient and credible proof to meet his burden under the Act. The applicant submits an additional affidavit. Regarding his criminal history, the applicant asserts that he has no criminal record that he is aware of and submits a letter from the Los Angeles Sheriff's Department Headquarters indicating that he has no arrest record. The applicant asserts that just because the affiants have no personal knowledge of how he arrived in this country has no bearing on the believability of their statements.

The AAO agrees that the director did not evaluate the sufficiency of all evidence submitted by the applicant. The AAO also disagrees with the director's conclusion that affidavits alone are not sufficient establish an applicant's continuous residence in the United States during the requisite period. The AAO has reviewed all of the evidence and has made a de novo decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

An applicant for permanent resident status under section 1104 of the LIFE Act (Life Legalization applicant) 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. Section 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 section 1104 of the LIFE Act. The inference to be drawn from the documentation

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<sup>1</sup> The AAO maintains plenary power to review each appeal 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 AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

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). *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.

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 June 9, 1993. On June 2, 2002 the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing, by a preponderance of the evidence, that his 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.

The applicant has provided the following evidence relating to the requisite period:

Contemporaneous Evidence

- A letter dated April 24, 2002, from Stanford Avenue School, indicating that the applicant attended kindergarten there from October 2, 1979, to November 28, 1979. His recorded address at the time is [REDACTED], South Gate.

Letters and Affidavits

- A letter dated May 24, 1993, from [REDACTED]. The letter lists Ms. [REDACTED] current address as [REDACTED], Los Angeles, California. Ms. [REDACTED] states that the applicant lived in her residence from April 17, 1980, to February 18, 1990. She states that he did not contribute to the rent or pay any bills. She states that all receipts were in her name and that he has no proof of payments. She states that the applicant is a serious person with high moral character and very responsible. [REDACTED] fails to provide details regarding her residence with the applicant for 10 years, except to note that he did not contribute towards rent or pay any bills. Although she claims that the applicant lived with her from 1980 to 1990, the statement lacks any details regarding why the applicant, a child of six in 1980, was living with her, not attending school, and not residing with his parents or other relative. She fails to indicate any knowledge of the applicant's travel to or entry into the United States or the circumstances regarding his move to the United States as a child. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period;
- An affidavit, sworn to on April 24, 2002, from [REDACTED], the applicant's sister. [REDACTED] states that the applicant resided at [REDACTED], Los Angeles, California, from 1979 to 1985, with his cousin [REDACTED] who was renting the property at the time. This contradicts [REDACTED] statement, which indicates that the applicant lived with her from 1980 to 1990. She states that she and the applicant attended Los Angeles Unified School on Stanford Avenue for about one and a half months in 1979. She states that their mother had died in Mexico and that their father was an alcoholic. She states that she and the applicant attended other schools, but don't remember the names of the schools or the cities where the schools were located. She states that when she was nine years old and the applicant was seven years old their father stopped sending them to school. This contradicts the applicant's testimony that he attended school until the sixth or seventh grade. [REDACTED] states that she is now a lawful permanent resident through marriage to her husband, and that she and the

applicant missed all the amnesty programs because their father abandoned them and they were supported by different relatives in different homes. [REDACTED] does not provide details about the circumstances of the applicant's continuous residence during the requisite period. She does not indicate any knowledge of where the applicant lived after 1985 or state how often or under what circumstances she saw the applicant during this time. Due to the inconsistencies and lack of detail in this letter, it can be given minimal weight as evidence of the applicant's continuous residence during the requisite period;

- A letter dated May 1, 2002, from [REDACTED] of La Mirada, California. He states that the applicant has been an acquaintance of his since about 1986 and that they have maintained a friendship ever since. He states that they see other at family reunions, weekend get-togethers, and other gatherings. He states that he met the applicant through [REDACTED], his coworker and the applicant's uncle. [REDACTED] does not appear to have knowledge about the specific dates the applicant has resided in the United States or about the locations where he has resided. This letter lacks sufficient detail and can be given minimal weight as evidence of the applicant's residence in the United States during the requisite period;
- A letter dated April 24, 2002, from [REDACTED] of South Gate, California. He states that he met the applicant in the beginning of 1986 at the body shop where he worked. He states that the applicant would often stop by and would perform simple tasks for the shop. [REDACTED] states that the two became acquainted and have developed an extended and friendly relationship that continues through the present time. Although [REDACTED] appears to have known the applicant since 1986, the letter does not indicate that he had any personal knowledge of the applicant's continuous residence in the United States other than the fact that he saw him on occasion at his work place. Because the affidavit is significantly lacking in relevant detail, it lacks probative value and has only minimal weight as evidence of the applicant's residence in the United States during the requisite period;
- An affidavit dated May 25, 1993, from [REDACTED], of South Gate, California, the applicant's uncle. He states that the applicant has been here from 1980 to the present and that he sees him frequently. He states that he is a noble, respectful, and amiable person you can trust. Although [REDACTED] claims to know that the applicant has resided here since 1980, he does not indicate any personal knowledge of the applicant's claimed entry as a child, and does not state where, how often, or under what circumstances he has seen the applicant in the last 28 years. He does not list the applicant's addresses, and does not provide information demonstrating any personal knowledge of the applicant's residence in the United States during the requisite period. Because this letter is significantly lacking in relevant detail, it lacks probative value and has only minimal weight as

evidence of the applicant's residence in the United States during the requisite period; and,

- An affidavit dated June 9, 1993, from [redacted] of Los Angeles, California. [redacted] states that she has known the applicant since April 20, 1980. She states that they "met through other persons," but gives no further details about where or under what circumstances they met on April 20, 1980, when the applicant was six years old. She also does not explain how she recalls that it was April 20, 1980, when she met the applicant. She provides no other details except to comment on the applicant's character.

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 and presence in the United States for the requisite period. All 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 1979 or credibly attests to his presence in the United States during the requisite period. In some cases the affiants provide inconsistent and contradictory information regarding the applicant's claimed dates and places of residence.

The record of proceedings contains other documents, including a Social Security statement dated April 7, 2006, indicating earnings from 1991 to 2005; copies of letters received from Mexico in 1989; mortgage statement, birth certificates of his children, employment verification letters, certificate of participation and completion in English and Citizenship course. All of this evidence is dated after May 4, 1988, and does not 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 entered the United States without inspection on April 17, 1980, 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. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

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 inconsistencies 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.