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U.S. Citizenship
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FILE: [REDACTED]
MSC 02 247 61600

Office: LOS ANGELES

Date: **SEP 26 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: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The director noted an inconsistency in the applicant's testimony and application.

On appeal the applicant asserts that CIS erred in denying his application, and that his evidence is sufficient to establish eligibility.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(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 amenability to verification. 8 C.F.R. § 245a.12(e).

An applicant must establish eligibility by a preponderance of the evidence. 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 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 to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information

is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On April 6, 2007, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant responded by providing additional affidavits.

On May 10, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period. The director noted inconsistencies in the applicant's submitted documentation.

On appeal the applicant asserts that the director made an error in his decision, and submits corrective affidavits.

The record contains sufficient evidence to support that the applicant was probably present and residing continuously in the United States during the 1990s. The period in question is the applicant's arrival prior to January 1, 1982, and his continuous unlawful residence through May 4, 1988. Relevant to the period in question the record contains the following evidence:

- (1) Document, unsigned, and unattested, asserting generically that the affiant has known the applicant since 1982 when they worked at El Torito restaurant together.
- (2) Affidavit, signed by [REDACTED] asserting that he met the applicant at his restaurant in 1982 and they became friends.
- (3) Affidavit, signed by [REDACTED], asserting that he has known the applicant since 1985.
- (4) Affidavit, signed by [REDACTED], asserting he has known the applicant since 1980, when they had met at the apartment where they both resided, [REDACTED]
- (5) Affidavit, signed by [REDACTED] asserting he has known the applicant since 1980 when the applicant lived at his house at [REDACTED] for three years.
- (6) Letter, signed by [REDACTED] General Manager of El-Torito Restaurant, asserting the applicant's date of hire was [REDACTED]

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

In this case the documentation submitted by the applicant consists entirely of affidavits. Contrary to the applicant's assertions *Matter of E-M-*, does not stand for the proposition that affidavits alone are sufficient to establish eligibility. Documents which generically assert an affiant has known an applicant since a particular year are not sufficiently probative to support assertions of eligibility. In this case the documents provided list inconsistent areas of residence for the applicant, are generic in nature and fail to fully explain how the affiants came to know the applicant and what the nature of the relationships were. The documents and affidavits submitted are internally inconsistent, generic in nature, and lack credibility.

As an example, the applicant's Form G-325A, Biographic Information, states that the applicant resided at [REDACTED] from December 1981 to April 1985. The document at No. 4 above asserts the applicant lived at the apartments on [REDACTED] during that period – despite the fact that the applicant lists this address as his address for the period from May 2007 on, the date of the affidavit. The document at No. 5 above asserts the applicant lived with him for three years from 1980 (to 1983) on Tamarack Drive, an address not even listed on his G-325. As noted by the director these affidavits state that the applicant arrived in the United States prior to the date the applicant asserts he arrived. On appeal the applicant has submitted corrective affidavits from these individuals, but these affidavits fail to rehabilitate the glaring inconsistencies noted above.

The record contains other inconsistencies which seriously undermine the veracity of the applicant's assertions. On his Form G-325 the applicant asserts his birth date is November 1, 1963. On his California Driver's License the applicant's birth day is listed as November 1, 1962. In addition, the birth certificate submitted by the applicant, which contains the date November 1, 1962, contains obvious alterations. The letter listed at No. 6 above states the applicant was hired in 1996, while the applicant's G-325 and I-687 list a starting date in 1988. During an interview on November 7, 2006, the applicant asserted that he left the United States in June 1985, while on his class membership application, I-687, and I-485 he asserts that he departed the United States in 1987 to get married in Mexico.

Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.*

The discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. In addition, it appears the applicant is not prima facie eligible for LIFE act application, as there is no evidence in the record that the applicant actually filed a written claim for class membership in one of the legalization lawsuits, nor is there evidence in the record that the applicant actually departed the United States in 1987 and was front desked in his attempt to file a legalization application. Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

In addition, although not discussed by the director, the record reveals that the applicant was arrested on April 28, 2004, by the Santa Ana sherrif's department in California and charged with Driving under the Influence of Drugs or Alcohol, and Driving under the Influence of Alchohol with a blood alchohol content of greater than .08 percent. Any future proceedings must provide the final disposition for this and any other charges on the applicant's criminal record.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for LIFE Act legalization has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 245a of the Act. The applicant has failed to meet this burden.

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