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**U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 01 333 60491

Office: LAS VEGAS, NEVADA

Date: **SEP 29 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been forwarded to the Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

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), Las Vegas, Nevada, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that the applicant had not provided adequate evidence to support his claim that he had resided continuously in the United States in an unlawful status during the statutory period, a date prior to January 1, 1982 through May 4, 1988. Thus, the director denied the application.

On appeal, counsel asserted that the record did include sufficient evidence to establish that the applicant had resided continuously in the United States in an unlawful status throughout the entire statutory period. Counsel also submitted additional evidence of the applicant's continuous residence in the United States during the statutory period.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

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* LIFE Act § 1104(c)(2)(B) and 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).

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 application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

Documentary evidence may be in the format prescribed by CIS regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. 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 or 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

On or near December 26, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On August 29, 2001, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On September 18, 2006, the director issued a notice of intent to deny (NOID) in which he indicated that he intended to deny the application because the applicant had not established that he resided continuously in the United States during the statutory period. The director did not indicate what he found lacking in the evidence of record.

On January 8, 2007, the director issued a notice of decision in which he denied the application based on the reasons set forth in the NOID.

On February 12, 2007, the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), in this matter was received by the District Office, Las Vegas, Nevada. On the Form I-290B, counsel indicated that he would file a brief or additional evidence within thirty days.²

In his brief dated February 5, 2007 counsel asserted that the evidence of record did establish that the applicant had resided continuously in the United States in an unlawful status during the statutory period. Counsel also submitted additional evidence of the applicant's continuous residence in the United States during the statutory period.

At issue in this proceeding is whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through January 1, 1986.

On August 4, 2008, the AAO provided the applicant with a Notice of Intent to Dismiss which stated that the record includes the following adverse or inconsistent evidence regarding this point.

1. The Form for Determination of Class Membership in *CSS v. Meese* which the applicant signed under penalty of perjury but did not date. At item 6 of this form, the applicant stated that he first entered the United States during December 1981.
2. The affidavit of [REDACTED] dated December 27, 1990 on which the affiant attested that she is the applicant's aunt and that she has personal knowledge that the applicant resided continuously in the United States from April 1969 through the date that affidavit was signed. She attested that he lived at her home in Chino, California throughout that period.
3. A school record for the applicant written in Spanish which has not been translated into English that indicates that he attended school in Mexico through Spring 1979.
4. The affidavit of [REDACTED] dated December 27, 1990 on which the affiant attested that he has personal knowledge that the applicant resided continuously in the United States in Chino, California from September 1980 through the date that affidavit was signed. He also attested that he met the applicant through a friend of his and that he and the applicant worked at the same place for four years.
5. The affidavit of [REDACTED] dated June 28, 2001 on which the affiant attested that he has personal knowledge that the applicant resided continuously in the United States in Chino, California from 1982 through January 2000. He also attested that he met the applicant at a friend's home and that he and the applicant have been friends since 1984.
6. The affidavit of [REDACTED] of Chino, California dated March 25, 2002 on which the affiant attested that he has known the applicant since December 20,

² The record reflects that in fact counsel submitted an appeal brief with the Form I-290B.

1981 and that the applicant worked for him from 1981 through 1984. The District Adjudications Officer (DAO) contacted the affiant by telephone on December 9, 2004. The affiant told the DAO that he first met the applicant in 1983.

7. The Form I-687 signed by the applicant under penalty of perjury on December 26, 1990 on which he stated at item 36 that his first employment in the United States since entering was a position which he had at Eggs West which began during March 1984.
8. The employment verification letter on Eggs West, West Covina, California letterhead stationery signed by [REDACTED], Payroll Department Manager, and dated December 19, 1990, which states that the applicant worked for Eggs West from March 20, 1984 through the date that letter was signed.
9. A copy of the first page of a letter regarding an insurance claim which the applicant filed during 1986 on Tayson Insurance Administrators letterhead stationery. On this letter the applicant's address is listed as [REDACTED] California. However, on the Form I-687, the applicant stated that he resided at [REDACTED] Chino, California from December 1981 through the date that form was signed during December 1990.

The applicant stated on the Form for Determination of Class Membership that he first entered the United States during December 1981. Yet, he also submitted an affidavit on which his aunt, [REDACTED] attested to having resided continuously in the United States at her home from April 1969 through December 1990. In addition, the applicant submitted an affidavit on which his friend, [REDACTED] attested to the applicant having resided continuously in the United States from September 1980 through December 1990.

The applicant submitted an affidavit signed by [REDACTED] on which [REDACTED] attested to having met the applicant on December 20, 1981 and to having employed him from 1981 through 1984. However, when a DAO contacted [REDACTED] by telephone on December 9, 2004, he indicated that he first met the applicant during 1983. Also, on the Form I-687 the applicant stated that March 1984, when he began working for Eggs West, was the first time that he held a job in the United States.

In the Notice of Intent to Dismiss, the AAO stated that these discrepancies cast serious doubt on the applicant's claim that he entered the United States during December 1981 and cast doubt on the authenticity of all the evidence of record. This in turn cast doubt on the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Thus, the AAO stated in the Notice of Intent to Dismiss that the applicant could only overcome the inconsistencies in the record by providing independent, objective evidence of his claim that he resided continuously in the United States during the statutory period. The AAO also stated that, as the record stood, the applicant had failed to provide contemporaneous evidence that might be considered independent, objective evidence of his having resided in the United States throughout the statutory period.

In addition, this office stated that the various statements and affidavits then in the record which purport to substantiate the applicant's residence in the United States throughout the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States from a date prior to January 1, 1982 through May 4, 1988, and that they are not probative.

In response to the Notice of Intent to Dismiss, the applicant again failed to submit independent, objective evidence in support of his claim that he resided continuously in the United States during the statutory period. Rather, the applicant submitted through counsel additional statements and affidavits as well as a brief. In this brief, counsel asserted that typographical errors, nervousness on the part of affiants and "unscrupulous notaries" were to blame for various inconsistencies in the evidence of record.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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