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U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
MSC 02 256 60183

Office: WASHINGTON, D.C.

Date: **APR 20 2009**

IN RE: Applicant: [REDACTED]

PETITION: 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. If your appeal was dismissed or rejected, all documents have been forwarded to the U.S. 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.

John F. Grissom
Acting Director, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director, Washington, D.C., and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director determined that the applicant had failed to provide a timely response to the director's request for evidence (RFE). The director also indicated that the RFE instructed the applicant to provide additional evidence that he had resided in the United States during 1987 and 1988; to provide evidence that he had met the basic citizenship skills requirement described at section 1104(c)(2)(E) of the LIFE Act¹; and to provide an affidavit of support and any required documentation from the sponsor.² The director denied the application because the applicant did not provide a timely response to the RFE, and informed the applicant that he had the right to appeal this decision to the AAO.

On appeal, the applicant provided an affidavit of support, additional evidence relating to having resided continuously in the United States throughout the statutory period as well as additional evidence that he had satisfied the basic citizenship requirement. The applicant also submitted a brief and his own statement. He also suggested that it may not be proper to request an affidavit of support in this matter as that the director could have used a totality of the circumstances analysis to find that it was not likely that the applicant would become a public charge.

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.³

¹ The AAO notes that the RFE correctly informed the applicant that, after six months, he would be provided a second opportunity to take the basic citizenship examination. Yet, the record indicates that USCIS never provided the applicant this second opportunity, as required under the LIFE legalization regulations. Thus, as the record stands, USCIS is not able to make a final determination as to whether the applicant is able to meet the basic citizenship skills requirement. When the A-file is returned to the field, the director will continue the adjudication of this issue. This point is further developed later in this analysis.

² The director indicated in the notice of decision that the RFE stated that the record showed that the applicant's income was below 100% of the poverty line, and that, consequently, the director requested an affidavit of support. This is not correct. The RFE states that the applicant should submit an affidavit of support and that the sponsor named on that affidavit must demonstrate that he or she meets certain income guidelines related to the poverty level. The AAO notes that there is no evidence in the record that the applicant's income is below 100% of the poverty line.

³ 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).

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.*

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 U.S. Citizenship and Immigration Services (USCIS) 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.

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding basic citizenship skills, an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a))(relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the [Secretary of Homeland Security]) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Secretary of Homeland Security may waive all or part of the above requirements for aliens who are at least 65 years of age or who are developmentally disabled.

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. *See* 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 and 312.2.

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. *See* 8 C.F.R. § 245a.17(a)(2). The GED or high school diploma may be submitted either at the time of filing the Form I-485 LIFE Act application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

Finally, an applicant may establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The applicant may submit certification on letterhead stationery from a state recognized,

accredited learning institution either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after 6 months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. *See* 8 C.F.R. § 245a.17(b).

8 C.F.R. § 245a.18(c)(2) lists grounds of inadmissibility contained at section 212(a) of the Immigration and Nationality Act (Act) that may not be waived. This includes section 212(a)(4) of the Act (likely to become a public charge) which may only be waived for an applicant who is or was an aged, blind, or disabled individual as defined in section 1614(a)(1) of the Social Security Act. If a LIFE Act applicant is found to be inadmissible under section 212(a)(4) of the Act, he may still be admissible under the Special Rule described under paragraph (d)(3) of this section. *See* 8 C.F.R. § 245a.18(c)(2)(iv).

The regulations at 8 C.F.R. § 245a.18(d)(1), (d)(2), and (d)(3) provide the factors to be considered in determining whether an applicant is likely to become a public charge and whether the Special Rule applies; these regulations provide:

(1) In determining whether an alien is "likely to become a public charge", financial responsibility of the alien is to be established by examining the totality of the alien's circumstance at the time of his or her application for adjustment. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, family status, assets, resources, education and skills.

(2) An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (c)(2)(vi) of this section. The alien's employment history need not be continuous in that it is uninterrupted. In applying the Special Rule, [USCIS] will take into account an alien's employment history in the United States to include, but not be limited to, employment prior to and immediately following the enactment of IRCA on November 6, 1986. However, [USCIS] will take into account that an alien may not have consistent employment history due to the fact that an eligible alien was in an unlawful status and was not authorized to work. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for determination of public charge.

(3) In order to establish that an alien is not inadmissible under paragraph (c)(2)(vi) of this section, an alien may file as much evidence available to him or her establishing that the alien is not likely to become a public charge. An alien may have filed on his or her behalf a Form I-134, Affidavit of Support. The failure to submit Form I-134 shall not constitute an adverse factor.

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 May 4, 1988; and whether the record indicates that he is not likely to become a public charge. Here, the applicant has met that burden.

On or near May 15, 1991, 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 June 13, 2002, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

At the outset, the AAO notes that the director indicated in the notice of decision that the RFE asked the applicant to provide proof of having fulfilled the LIFE legalization basic citizenship requirements. This is not correct. Instead, the RFE issued the day of the applicant's first LIFE legalization interview informs the applicant that USCIS will provide him with an additional opportunity to take and to pass the English writing and U.S. history and civics portions of the basic citizenship examination after six months. The record indicates that the applicant was never provided this second opportunity/interview.⁴ When the AAO returns the applicant's A-file to the director, the director will continue the adjudication of this matter and provide the applicant a re-examination on basic citizenship skills, as he correctly indicated to the applicant in the RFE was the next required step. See 8 C.F.R. § 245a.17(b). At that second interview the applicant may provide proof that he is currently enrolled in an English as a Second Language/U.S. history and U.S. government class which fulfills *all* the regulatory requirements set forth at 8 C.F.R. § 245a.17(a)(3).

The record includes contemporaneous evidence as well as statements and affidavits relating to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, and that he is otherwise eligible to adjust, such as:

- 1) A copy of the USCIS officer's notes from the applicant's first LIFE legalization interview which indicate that the applicant passed the English reading section of the basic citizenship exam but he failed the English writing and U.S. history and U.S. government section of that examination. On the

⁴ Next to the typewritten statement that there would be a "re-exam in 6 months" the director wrote in "(or school)" by hand in penmanship that is difficult to read. It appears that the director meant to communicate that in six months the applicant might submit proof of attending classes which satisfy the basic citizenship requirement in lieu of taking the examination again. The AAO finds that this notation of "(or school)" is not developed enough to put the applicant on notice that at the second interview, USCIS would allow the applicant to submit additional documentation relating to the applicant's ESL coursework, beyond that which he provided at the first LIFE legalization interview, in lieu of retaking the examination.

same date the applicant submitted documentation on Tulare Adult School letterhead stationery signed by [REDACTED] Assistant Director, which indicates that the applicant is enrolled in an ongoing course in English as a second language (ESL) and English language Civics (EL Civics), a course designed to make students "more involved in their communities." There is no indication in the Tulare Adult School course description guide which the applicant submitted that either his ESL or EL Civics course includes instruction in U.S. history and government. The course description also indicates that the courses are one semester in length, rather than spanning a full academic year. On appeal, the applicant did provide documentation which indicates that he continued on for a second semester of ESL and EL Civics and completed over 63 hours of coursework. However, he again failed to provide any documentation to support the finding that any of this coursework included instruction in U.S. history and government.

- 2) The Form I-687 which indicates that during the statutory period and following the applicant worked as a machine operator in Compton and Gardena, California: from 1977 through 1978; from 1980 through 1984; and from August 1985 through November 1985.⁵ He worked as a cook's assistant in Los Angeles, California from April 1986 through June 1986. He worked for a landscaping business in Los Angeles, California from July 1986 through February 1989. He worked as a mechanic's assistant in Lynwood and Los Angeles, California from March 1989 through May 1989; May 1989 through October 1989; and October 1989 through the date that he signed that document.
- 3) The Form G-325A, Biographic Information, signed by the applicant on May 30, 2002, which lists the applicant's employment the five years prior to signing this form as: production employee at [REDACTED] Food (ManPower Temp Agency) in Dinuba, California from October 1998 through December 1998; gardener/self-employed from January 1999 through January 2001; maintenance staff/feeder at [REDACTED] Tulare, California from February 2001 through the date that the applicant signed the form.
- 4) A statement from the applicant submitted on appeal which indicates that he works daily at a dairy farm and that because his children are now old enough to attend school, his wife plans to find work outside the home as soon as she is able to obtain work authorization through the Family Unity provisions of LIFE legalization. His wife is healthy and in her thirties. She worked as a seamstress and in a pharmacy before she and the applicant started their family. The applicant stated that he and his wife own their home. Also the applicant

⁵ In the deposition which the applicant gave during March 1998 which is included in the record, the applicant volunteered that he has never quit a job, but has only left jobs in connection with an employer lay-off. There is nothing in the record to indicate that this is inaccurate.

is not receiving any government assistance. The applicant also stated that his ten-year old U.S. citizen son [REDACTED] has required extensive speech therapy due to problems with his vocal chords that had kept him from being able to speak. This has caused [REDACTED] problems in school. However at the time of writing the statement, according to the applicant, [REDACTED] had improved to the point that he was only two grade levels behind and had become more independent, freeing up time for the applicant and his wife. The applicant indicated that he and his wife plan to use this time to work more outside the home. [At the time of this 2009 decision [REDACTED] is 14 years old.]

- 5) The record as a whole indicates that the applicant has not received any government assistance except for unemployment insurance payments, disability insurance payments and the medical assistance which he received very briefly during the statutory period.
- 6) The Form I-134, Affidavit of Support, from [REDACTED] which indicates that she is willing to sponsor the applicant and deposit a bond, if necessary, to guarantee that the applicant will not become a public charge while residing in the United States. The Forms 1040 which she attached to this form indicate that she earned well over 125% of the poverty line for her family of two during 2001 and 2002 when her total income was \$30,361 and \$29,140, respectively. However, during 2003, her total income was \$12,217, which is above the 100% poverty line but less than the 125% of the poverty line for her family, following guidelines set for the beginning of 2003 which the applicant submitted into the record.
- 7) A copy of the applicant's California Identification Card issued on July 26, 1977.
- 8) Copies of documents issued by the California Department of Motor Vehicles (CA DMV) which confirm that the applicant updated his address with the CA DMV on August 24, 1983 and on July 17, 1984.
- 9) Copies of earning statements which indicate that the applicant worked for Strolee of California during 1983 and 1984.
- 10) A copy of the applicant's California Driver's License issued on August 20, 1982.
- 11) Copies of earning statements dated August 10, 1984 and September 27, 1985 which indicate that the applicant worked for [REDACTED] of California at this time.
- 12) A copy of the applicant's identification card as an employee of [REDACTED] of California. There is no date on the card.

- 13) A copy of the applicant's Videos "R" Us membership card issued on December 28, 1986 in California.
- 14) A copy of the applicant's earning statement dated April 28, 1986 issued in California by [REDACTED]
- 15) A copy of the Form I-687 which the applicant signed under penalty of perjury which indicates that the applicant worked for [REDACTED] a landscaper, from 1986 until 1989. The Form I-687 and the copy of [REDACTED]' business card in the record indicate that [REDACTED]' business address was [REDACTED], Los Angeles, California.
- 16) A one-hundred and twenty page deposition of the applicant taken by attorneys on both sides of the *Zambrano* legalization class action lawsuit during March 1998 in which the applicant provided a consistent, detailed account of having resided continuously in the United States throughout the statutory period and of having received unemployment insurance, disability payments and medical assistance for brief periods during the statutory period. (The record indicates that he received unemployment insurances for a few months in 1982 and 1984. He received medical assistance from 1978 through 1981 when being treated for tuberculosis after this disease spread through his place of employment. He received disability payments for a short period in 1983 after suffering some hearing loss.)
- 17) The applicant's 1980 Form W-2, Wage and Tax Statement, which demonstrates that the applicant was an employee of [REDACTED] of California during that year. The form is attached to the applicant's 1980 Form 1040, U.S. Individual Income Tax Return.
- 18) Copies of documents issued by the Los Angeles County Department of Health that indicate that this agency provided the applicant with medical treatment for tuberculosis from 1978 through 1981, as the applicant indicated in his deposition and elsewhere in the record.
- 19) A copy of the applicant's Form 1099-US, State of California Unemployment Compensation Payments which indicate that the applicant received \$1,653 in unemployment insurance during 1982, as the applicant indicated in his deposition and elsewhere in the record.
- 20) A copy of the applicant's 1983 Form W-2 which states that [REDACTED] of California employed the applicant during 1983. The form is attached to the applicant's 1983 Form 1040.
- 21) A copy of the applicant's 1984 Form W-2 which states that Strolee of California employed the applicant during 1984. The form is attached to the applicant's 1984 Form 1040.

22) A copy of the applicant's 1985 Form W-2 which states that [REDACTED] of California employed the applicant during 1985. The form is attached to the applicant's 1985 Form 1040.

The applicant provided several reliable pieces of contemporaneous evidence including many government issued documents of having resided in the United States during the statutory period. He also provided statements to support his claim that he resided in the United States throughout the statutory period. In addition, he provided a credible account of having resided in the United States throughout the statutory period at the deposition he gave in connection with the *Zambrano* class action lawsuit in which he was a named plaintiff. This office finds that there are no material discrepancies between the contemporaneous evidence in the record, the statements made on the Form I-687, the sworn testimony given at the deposition or within statements elsewhere in the record related to that applicant's residence in the United States throughout the relevant period. The AAO finds that the record demonstrates that it is more likely than not that the applicant resided continuously in the United States throughout the statutory period.

Under a totality of the circumstances analysis, the applicant has shown that he is not likely to become a public charge as defined at 8 C.F.R. § 245a.18(c)(2)(iv).

The applicant has consistently acknowledged throughout these proceedings that he did receive, for a short time during the relevant period, unemployment compensation after being laid off, disability payments after suffering hearing loss and medical assistance when tuberculosis spread through his workplace in the late 1970s. The record also indicates that other than this assistance, the applicant has been self-supporting while residing in the United States and that he has a strong work ethic. The record contains no evidence that he has received any assistance beyond that listed here.⁶ Also, as his children are now old enough to attend school, the applicant's wife will resume working, as she was doing prior to starting her family, as soon as she is able to obtain work authorization through the Family Unity provisions of LIFE legalization. The applicant and his wife own their home. Further, the applicant submitted a Form I-134 affidavit of support executed by [REDACTED] who has promised to deposit a bond if necessary to guarantee that the applicant will not become a public charge while residing in the United States. The evidence in the record tends to establish that the applicant possesses the ability and means to support himself financially and he has friends who could provide assistance, if needed in an emergency. The AAO finds that the applicant is not likely to become a public charge in light of the totality of the circumstances.

Thus, the appeal will be sustained.

As noted above, the documentation from Tulare Adult School submitted at the applicant's initial LIFE legalization interview and that submitted on appeal failed to establish that the applicant's year long course which covered more than 40 hours of coursework in ESL and EL Civics also included coursework in U.S. history and government. The record also indicates that USCIS never provided the

⁶ The applicant's U.S. citizen son [REDACTED] may receive, for example, speech therapy as a form of government provided assistance, but any assistance provided to the applicant's U.S. citizen children will not be deemed assistance to the applicant.

applicant with a second opportunity to take the English writing and U.S. history and government examinations, as required at 8 C.F.R. § 245a.17(b). Thus, USCIS has not yet completed the adjudication of this issue. The A-file will be returned to the director that he might complete the adjudication of this application including whether the applicant is able to meet the basic citizenship requirements set forth at section 1104(c)(2)(E)(i) of the LIFE Act and the accompanying regulations.

The AAO notes that, *if* the director finds the applicant ineligible for permanent resident status under section 1104 of the LIFE Act, the director shall consider the applicant's eligibility for adjustment of status to that of a temporary resident pursuant to the regulation at 8 C.F.R. § 245a.6, which provides, in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director *shall* consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A).

(Emphasis added).

This office notes that when applying for temporary resident status under the *Immigration Reform and Control Act of 1986* (IRCA), the applicant was not required to demonstrate a basic knowledge of English and U.S. history and government. It is only after such applicant has qualified as a temporary resident and is attempting to adjust to *permanent* resident status that he or she must fulfill requirements relating to English and U.S. history and government. See 8 C.F.R. § 245a.3(b)(4)(i)(A).

ORDER: The appeal is sustained. The director shall continue the adjudication of the application pursuant to the discussion above and shall enter a new decision which, if adverse to the applicant, is to be certified to the AAO for review.