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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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AUG 19 2009

FILE: [REDACTED]  
MSC 03 248 60227

Office: LOS ANGELES, CA Date:

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 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 Chief, Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director, Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to submit sufficient evidence to establish that he had resided continuously in the United States throughout the statutory period as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserted that the record did include sufficient evidence to establish that he had resided continuously in the United States in an unlawful status throughout the entire 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.<sup>1</sup>

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.*

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<sup>1</sup> 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 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.

On or near April 19, 1993, 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 5, 2003, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The director issued a notice of intent to deny (NOID) in which she indicated that she 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 indicated that the applicant had provided inconsistent testimony regarding his entry date into the United States and that this had undermined the credibility of his claims in the instant matter. Specifically, the director indicated, incorrectly, that the applicant initially testified at his cancellation of removal hearing that he entered the United States in 1987, and that he later changed his testimony and stated that he entered the United States in 1981. This point in the NOID is withdrawn. The record establishes that, first, at the applicant's January 27, 1998 *asylum* interview, he testified that he initially entered the United States in 1981 and that his most recent entry into the United States occurred on June 28, 1987. Based on this, when the Los Angeles Asylum Office referred his case to the Executive Office for Immigration Review (EOIR), it issued a Notice to Appear (NTA) which listed the applicant as having entered the United States on or about June 28, 1987, as that was the date of his most recent entry, according to his testimony before the asylum officer. This NTA was filed with EOIR, and once the matter was before EOIR, the applicant made a request for cancellation of removal. At the outset of the EOIR hearing, the applicant's attorney explained to the Immigration Judge that while his most recent entry into the United States was on June 28, 1987 as stated on the NTA, he had actually made an earlier entry into the United States on November 17, 1981. Throughout the hearing, while providing testimony, the applicant repeatedly and consistently made reference to having first entered the United States in 1981. The record does not support the director's statement that the applicant indicated before EOIR that his first entry occurred in 1987.<sup>2</sup>

The director also indicated that the applicant provided inconsistent statements regarding whether his children's aunt, [REDACTED], would be a proper caregiver for his children should the children remain in the United States if the applicant and his wife were removed from the United States. The director went on to state that it "is not believable to [USCIS] that if [the applicant] and [his] wife were to be removed back to Mexico, [the applicant] would even think to leave [his] children in the United States given the testimony that [the applicant and his wife] both gave . . . of how both of [them] are dedicated to the care of [their] children." These points in the NOID are withdrawn. The record establishes that the applicant's testimony regarding whether the children's aunt would be a proper caregiver and would be available as a caregiver relates to the extreme hardship claim that forms an integral part of a request for cancellation of removal. Whether the applicant and his wife would need to separate from their children or would be willing to do so, if they departed the United States, is not relevant to the instant application. Likewise, any changes related to the applicant's perception of whether his children's aunt would be a suitable and/or available caregiver in the United States are not relevant to the LIFE legalization application.

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<sup>2</sup> The director stated that the applicant's documentation in the cancellation of removal claim begins with evidence of residence from 1987 and continues with evidence from 1988, 1989, etc., and the director concluded from this evidence that his first date of entry is 1987. This is not the correct inference to draw from the supporting documents in the cancellation of removal proceedings. The applicant filed for cancellation of removal during 1998. To qualify for this benefit, he needed only to demonstrate continuous residence back to the date of his most recent entry June 28, 1987, not further. Thus, the fact that, before EOIR, the applicant submitted documentary evidence from the date of this entry forward is not an indication that he presented 1987 as the year of his *first* entry.

In the NOID, the director also indicated that the applicant must provide *documentary* evidence of his initial entry into the United States. She suggested as well that a LIFE legalization applicant must provide documentary evidence of having been physically present in the United States from November 6, 1986 through May 4, 1988. These points are withdrawn. The regulation at 8 C.F.R. § 245a.16 indicates that an applicant may use documentation issued by a governmental or nongovernmental authority to establish continuous physical presence, but it does not require such evidence. Contemporaneous, documentary evidence is not in all cases required to establish the applicant's claim of continuous physical presence or continuous residence in the United States beginning prior to January 1, 1982 and throughout the statutory periods. *See Matter of E-M-*, 20 I&N Dec. 77, 82-83 (Comm. 1989). Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence throughout the entire statutory period. *See id.*

In the rebuttal, the applicant indicated through counsel that during the cancellation of removal proceeding, he consistently stated that in 1981 he made his first entry into the United States, and that he had been in the United States without making any departures since his entry in 1987. The applicant also stated through counsel that he did not provide contradictory statements related to the care of his children. Rather, the applicant stated that he had to change his position regarding the issue of whether his children would live with their aunt, [REDACTED] if he had to depart the United States. That is, conditions had changed since the cancellation of removal proceeding such that, as of the date of the LIFE legalization interview, this aunt was no longer receptive to having the children come live with her permanently due to the financial strain that that would cause her and other issues. The applicant indicated that he had established eligibility to adjust to permanent resident status under the LIFE Act.

The director issued a notice of decision in which she denied the application based on the reasons set forth in the NOID.

On appeal, the applicant asserted that the evidence of record did establish that he had resided continuously in the United States in an unlawful status during the statutory period and that he had not provided inconsistent claims regarding, for example, the date of his first entry, as suggested by the director.

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.

On June 24, 2009 the AAO issued a notice of intent to dismiss which stated that the record includes the following adverse or inconsistent evidence regarding his claim that he resided continuously in the United States throughout the statutory period:

1. The Form I-687, Application for Status as a Temporary Resident, that the applicant signed under penalty of perjury on April 19, 1993, on which he stated at item 33, where he was to list all his residences in the United States since his first entry, that he resided at [REDACTED] Santa Ana, California, 92704 from November 17, 1981 through January 30, 1987; that he

resided at [REDACTED], Anaheim, California 92806 from January 30, 1987 through October 30, 1990; and that he resided at [REDACTED], Bell Flower, California 90706 from October 30, 1990 through the date that he signed that form.

2. The affidavit of [REDACTED] dated October 15, 1994 on which the affiant attested that he had personal knowledge that the applicant resided in Anaheim, California from December 1981 through the date that he signed that document. He also attested that between December 1981 through the date that he signed that document, the longest period during which he went without seeing the applicant was less than one week.
3. The affidavit of [REDACTED] dated October 1, 1994 on which the affiant attested that she had personal knowledge that the applicant resided in Anaheim, California from December 1981 through the date that she signed that document. She also attested that between December 1981 through the date that she signed that document, the longest period during which she went without seeing the applicant was less than one week.

The applicant stated on the Form I-687 that he resided at [REDACTED] Santa Ana, California, 92704 from November 17, 1981 through January 30, 1987; that he resided at [REDACTED], Anaheim, California 92806 from January 30, 1987 through October 30, 1990; and that he resided at [REDACTED], Bell Flower, California 90706 from October 30, 1990 through April 19, 1993, the date that he signed that form. Yet, [REDACTED] and [REDACTED] attested that the applicant lived in Anaheim, California from December 1981 through October 1994.

The AAO pointed out in the notice of intent to dismiss that these discrepancies cast doubt on the authenticity of all the evidence of record, including 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. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The AAO stated in the notice of intent to dismiss that such inconsistencies in the record may be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States throughout the statutory period. *See id.* This office also stated that the various hand-written receipts in the record are not on their own sufficient to overcome the inconsistencies in the record between the claims on the Form I-687 and the claims of the applicant's affiants as described earlier.

In addition, this office determined that the various statements and affidavits in the record which attempt to substantiate the applicant's residence and employment in the United States throughout the statutory period are not sufficient to overcome the inconsistencies in the record regarding his claim that he maintained continuous residence in the United States throughout the statutory period. This

office also noted in the notice of intent to dismiss that the affidavits and statements lack detail relating to the applicant's claim of continuous residence such as his specific addresses in the United States during the statutory period.

In his response to the notice of intent to dismiss, the applicant did not provide any independent, objective evidence to overcome the discrepancies set forth in the notice. Instead the applicant indicated that the statement from his previous employer which is already in the record is sufficient to demonstrate his physical presence during the requisite period. The applicant also explained that his two affiants attested incorrectly that he lived in Anaheim, California from 1981 through 1994 because the two of them worked with him at the Benihana restaurant in Anaheim and the three would meet each other at the restaurant, not at each other's homes, whenever they went out socially. He indicated further that the two affiants did correctly attest that during the statutory period the three of them never went more than one week without seeing each other because they all three worked at the same restaurant. These statements and explanations put forth by the applicant are not independent, objective evidence and they do not overcome the inconsistencies in the record related to the applicant's claim that he resided continuously in the United States throughout the statutory period. Moreover, the applicant has submitted statements into the record which indicate that he did not begin working at the Benihana restaurant until 1987. It is not clear to this office how individuals with whom the applicant did not begin working until 1987 could attest to having personal knowledge that the applicant resided continuously in the United States from 1981 through 1987.

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 to adjust to permanent resident status under section 1104 of the LIFE Act.

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