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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

MSC 02 204 63038

Office: LOS ANGELES

Date:

FEB 05 2009

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 returned to the National Benefits 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 remanded for further action, you will be contacted.

for 
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 in 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 on the ground that the applicant failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director did not properly evaluate and give due weight to the evidence submitted by the applicant. Counsel asserts that the totality of the evidence shows that the applicant has satisfied the eligibility requirements for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States.” The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” 8 C.F.R. § 245a.16(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 its amenability to verification. See 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 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 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 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.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of Mexico who claims to have lived in the United States since December 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 22, 2002.

In a Notice of Intent to Deny (NOID), dated March 15, 2004, the director indicated that the photocopied Social Security earnings statement, W-2 Wage and Tax Statements, and federal income tax returns submitted by the applicant represented credible evidence that he resided in the United States from 1985 onward, but that the affidavits in the record and the photocopied receipts dated in 1984 were insufficient to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the country through the end of 1984. Specifically, the director indicated that the affidavits were substantively deficient and that the applicant did not submit the original receipts for verification. The applicant was granted 30 days to submit additional information.

In response to the NOID, the applicant submitted explanations for the evidentiary deficiencies cited in the NOID.

On July 22, 2004, the director issued a decision denying the application on the ground that the response to the NOID was insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the director did not properly evaluate and give due weight to the evidence submitted by the applicant. Counsel asserts that the totality of the evidence shows that the applicant has satisfied the eligibility requirement for LIFE legalization. Counsel has supplemented the record with the originals of the 1984 retail receipts.

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).

The AAO concurs with the director's decision that the applicant has submitted sufficient evidence to establish his continuous residence in the United States from 1985 through May 4, 1988, and will focus its review on the evidence submitted by the applicant of his continuous residence in the country from before January 1, 1982 through the end of 1984.

The documentation submitted by the applicant in support of his claim that he was continuously resident in the United States from before January 1, 1982 through the end of 1984 consists of the following:

- Several retail and rental receipts dated in 1984 with handwritten notations of the applicant's name and the dates of issuance.
- Affidavits and letters from nine individuals, dated in 1989 and 2001, claiming to have employed, worked with, rented an apartment to, or otherwise known the applicant at various times during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

The file contains two Forms I-687 (application for status as a temporary residence), filed by the applicant in 1990 and 2005, as well as a Form G-325A (Biographic Information) filed with the applicant's Form I-485 in 2002. These forms provide contradictory information regarding the applicant's residence and employment in the United States during the 1980s. On the Form I-687 filed in 1990, the applicant listed the following addresses and employers in the 1980s:

Residences:

- [REDACTED] Los Angeles, California, from 1980 to 1988; and
- [REDACTED], Los Angeles, California, from 1988 to February 1990.

Employers:

- █, Redondo Beach, California, gardener, from 1980 to 1983;
- █, Los Angeles, California, machine operator, from 1983 to 1986;
- █ Los Angeles, California, machine operator, from 1986 to 1987;
- █, machine operator, from 1987 to 1988; and
- Self-Employed from 1988 to the present (1990).

On the Form I-687 filed in 2005, the applicant listed the following addresses and employers during the 1980s:

Residences:

- █ Redondo Beach, California, from February 1981 to September 1983;
- █ Inglewood, California, from September 1983 to December 1984;
- █ Inglewood, California, from December 1984 to October 1985; and
- █, Los Angeles, California, from October 1985 to May 1988.

Employers:

- █, Redondo Beach, California, gardener, from February 1981 to December 1983;
- █ Los Angeles, California, machine operator, from February 1984 to March 1985; and
- █, El Segundo, California, machine operator, from March 1985 to September 1989.

On the Form G-325A completed on April 11, 2002, and filed with the Form I-485 on April 22, 2002, the applicant listed his address as █, Lennox, California, from April 1985 to February 1993, and his employer as █ Company in Culver City, California, from March 1985 to May 1990. The applicant submitted a "Self Employment letter" dated October 21, 1989, stating that he was self-employed from 1980 to 1983 and from 1988 to the present.

The conflicting information in the record regarding the applicant's residential addresses and employers during the 1980s undermines the credibility of his claim to have continuously resided in the United States from before January 1, 1982 through May 4, 1988.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The various retail and rental receipts dated in 1984 have handwritten notations of the applicant's name and no addresses. The receipts have no date stamps or other official markings to verify the dates they were written. The rental receipt dated September 1, 1984, did not identify the address of the rental property. Thus the receipts have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the year 1984, much less from before January 1, 1982.

As for the affidavits and letters in the record, from individuals who claim to have employed, worked with, rented an apartment to, or otherwise known the applicant during the 1980s, all have minimalist formats with vague and general information. The authors provided remarkably few details about the applicant's life in the United States and their interaction with him over the years. Nor are the affidavits and letters accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationship with the applicant in the United States during the 1980s. In addition, [REDACTED] claim that the applicant resided in the City of Inglewood, California, from 1980 to 1983 is contrary to the information provided by the applicant on either of his Forms I-687 about his residence during the same period. Likewise, [REDACTED] claim that the applicant was her tenant in Redondo Beach California, from 1981 to 1983 is contrary to the address provided by the applicant on his Form I-687 filed in 1990 for the same period. [REDACTED] claim that the applicant resided at [REDACTED] in Inglewood in 1983 and 1984 is contrary to the address provided in the 1990 Form I-687. In view of their contradictions and substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through the end of 1984. Thus, the applicant has not established his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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