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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date: FEB 1 0 2009

MSC 01 342 60060

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

The director denied the application on September 29, 2006 because she found that the evidence in the record failed to demonstrate that it was more likely than not that the applicant resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

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 applicant submitted additional statements and affidavits that relate to his claim of continuous residence in the United States during the statutory period.

On December 15, 2008, the AAO issued a Notice of Intent to Dismiss. On January 22, 2009, the applicant submitted through counsel a brief and additional signed statements in support his claim that he resided continuously in the United States throughout 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).

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[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 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.

On or near September 18, 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 September 7, 2001, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On August 31, 2006, 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 gave various reasons why she intended to deny the application. For example, she indicated that because the affidavits and statements provided were general and lacked details, they were not probative. She did not however indicate what facts were missing from the affidavits and statements in the record.

In the NOID, the director also suggested 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. This point in the NOID is 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. The director also found that the affidavits and statements in the record were not probative because they are not corroborated by contemporaneous evidence. She also indicated that she intended to deny the application because the applicant did not provide contemporaneous evidence of his initial entrance into the United States to show that he has been in the United States from a date prior to January 1, 1982. These points in the NOID are also withdrawn. In some instances, contemporaneous, documentary evidence is not needed to establish the applicant's claim of continuous physical presence or continuous residence in the United States 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 in some cases be sufficient to demonstrate continuous residence throughout the entire statutory period. *See Id.*

In the rebuttal dated September 26, 2006, the applicant asserted through counsel that he had submitted all the evidence that he can reasonably be expected to submit and that the evidence of record was sufficiently detailed and credible. He also submitted an additional statement and an envelope that he claimed was mailed to him in the United States. The envelope bears a postmark date which fell after the statutory period.

On September 29, 2006, the director issued a notice of decision in which she denied the application based on the reasons set forth in the NOID.

On October 27, 2006, the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), in this matter was received by the District Office, Los Angeles. 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. He indicated that during the statutory period he was paid in cash and as such is not able to produce documentation of having been paid. Also the applicant indicated that if there appeared to be any discrepancies in his testimony elicited at the LIFE legalization interview that is only because he felt nervous at the interview. He submitted additional statements to support his claim that he resided 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 May 4, 1988.

The record at the time of the appeal included the following adverse or inconsistent evidence regarding this point.

1. The statement of of Bakersfield, California dated September 12, 1990 submitted with the class membership application and submitted again on appeal in which indicated that he earned a living by paying cash to those who pick fruits and vegetables in the various fields which he has bought and that the applicant worked for him picking fruits and vegetables from March 1986 through the date that signed that document. He indicated that he kept no official records of the work that the applicant and the others who worked for him did.

2. The affidavit of of Bakersfield, California dated September 12, 1990 submitted with the class membership application and submitted again on appeal in which attested that he saw the applicant in the fields every day from March 1986 through the date that he signed that document.

3. The Form I-687 signed by the applicant under penalty of perjury on September 18, 1990 on which he stated at item 36, where he was to list all his employment in the United States since his first entry, that he worked for of Lamont, California doing farm labor/picking grapes from March 1986 through the date that he signed that application.

4. The Form I-687 signed by the applicant under penalty of perjury on July 13, 2004 on which he stated at item 33, where he was to list all his employment in the United States since his first entry, that he worked for of Lamont, California doing farm labor from March 1986 through November 1990.

5. The affidavit of of , Bakersfield, California dated September 18, 1990 submitted with the class membership application and again on appeal in which attested that he is the landlord at Bakersfield, California and that the applicant resided at this address from January 1987 through the date that signed that form.

6. The Form I-687 signed by the applicant under penalty of perjury on September 18, 1990 on which he stated at item 33 that he lived at Lamont, California from October 25, 1981 through December 1986; and that he lived at Bakersfield, California from January 1987 through the date that he signed that application.

7. The Form I-687 signed by the applicant under penalty of perjury on July 13, 2004 on which he stated at item 30 that he lived at Lamont, California from October 1981 through January 1986; and that he lived at , Bakersfield, California from January 1986 through 1990.

The applicant stated on the Form I-687 dated September 18, 1990 that he worked for of Lamont, California doing farm labor/picking grapes from March 1986 through the date that he signed that application. He stated on the Form I-687 dated July 13, 2004 that he worked for Jose of Lamont, California doing farm labor from March 1986 through November 1990. However, the applicant also submitted the statement of of Bakersfield, California dated September 12, 1990 in which stated that the applicant worked for him picking fruits and vegetables from March 1986 until the date that he signed that document. Further, in the affidavit of of Bakersfield, California dated September 12, 1990, Mr. attested that he saw the applicant in the fields every day from March 1986 until the date that he signed that document. Also, the applicant submitted a document in which attested that he is the landlord at , Bakersfield, California and that the applicant resided at this address from January 1987 through the date that he signed that affidavit in September 1990. On the Form I-687 dated September 18, 1990, the applicant stated at item 33 that he lived at , Lamont, California from October 25, 1981 through December 1986; and that he lived at Bakersfield, California from January 1987 through the date that he signed that application. Yet, on the Form I-687 dated July 13, 2004, the applicant stated at item 30 that he lived at ; Lamont, California from October 1981 through January 1986; and that he lived at Bakersfield, California from January 1986 through 1990.

These discrepancies cast doubt on the authenticity of all the evidence of record. This in turn casts 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).

Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States throughout the statutory period.

After reviewing all the evidence in the record at the time of the appeal, the AAO found that the applicant had failed to provide sufficient evidence that might be considered credible, independent, objective evidence of having resided in the United States throughout the statutory period. As noted in the Notice of Intent to Dismiss, the AAO determined that the envelope which the applicant

submitted that purports to be an envelope mailed to him at an address in the United States, after the statutory period, is neither relevant nor probative.

In response to the Notice of Intent to Dismiss submitted on January 22, 2009, the applicant submitted only additional signed statement and a brief. He did not provide any independent, contemporaneous evidence of having resided in the United States during the statutory period. In the brief, the applicant indicated through counsel that he worked simultaneously for and during the statutory period, and that he did not list having worked for on the Form I-687 because he had already listed one employer for the time period in question. He also indicated that had asserted that he saw the applicant in the fields every day because s field was adjacent to field, and as such was able to see the applicant even at those times that he was working for

The AAO finds that the various statements, affidavits and briefs 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.

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, he 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.

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[2] The AAO notes incidentally that the addresses in the record for and are not adjacent, but are over 3.7 miles apart, according to maps available at www.mapquest.com (accessed February 6, 2009), and that s statement indicates that, during the statutory period, he hired the applicant to work for him in various fields, not in one single field, such as one attached to farm or some other specific field.