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U.S. Citizenship
and Immigration
Services

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FILE:

Office: SAN FRANCISCO

Date: **FEB 27 2009**

[REDACTED] - consolidated herein]

MSC 02 116 61585

IN RE: Applicant:

APPLICATION:

[REDACTED]

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, reopened, and again denied by the Director, San Francisco, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief. Counsel asserts that the applicant has sufficiently established his initial entry and continuous residence from before January 1, 1982; that the government's extreme delay – after seventeen years and two interviews in 2003 and 2007 – in requiring additional documentation has prejudiced the applicant's ability to provide evidence and that previously provided evidence should be given full weight; the applicant is eligible for adjustment of status under the LIFE Act as his departure from the United States in 1987 was "brief, casual and innocent;" and, there were no inconsistencies in the applicant's claimed information, and his and his affiants' statements.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on January 25, 2002. On June 28, 2007, the director denied the application. The applicant, through counsel, filed a timely appeal from that decision on July 26, 2007. The director subsequently reopened the matter, and again denied the application on November 16, 2007.

The issue in this proceeding is whether the applicant has established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

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 record reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

Employment Letters:

1. An un-notarized letter, dated July 27, 1990, from [REDACTED] of Mill Valley, California, stating that the applicant had worked for him as a handy-man from October 1981 through July 1990, at a weekly income of \$390.00 a week during the past 4 years and part-time during the preceding 5 years earning approximately \$220.00 per week.
2. A fill-in-the-blank affidavit, notarized on July 30, 1990, from [REDACTED] of Sausalito, California, stating that the applicant had been employed by her as a casual laborer on unspecified dates and that he had resided at unspecified addresses in San Rafael, California from 1981 to April 1990.
3. An un-notarized declaration, dated March 7, 2007, from [REDACTED] of San Rafael, California, stating that his family owned a restaurant in San Francisco, [REDACTED], from 1962 to 1987, and that the applicant worked in their gardens in Daly City and as a dishwasher in the restaurant from the beginning of October 1981 until the summer of 1983, during which time he was paid in cash and by checks (of which he has no photocopies).
4. An undated, un-notarized letter from [REDACTED] President of Capital Cities Real Estate Group in Mill Valley, California, stating that the applicant had been employed since 1981. In a fill-in-the-blank affidavit, notarized on an illegible date in 1990, [REDACTED] indicates that he and the applicant are "friends" and that the applicant had lived at unspecified addresses in San Rafael, California from September 1981 to April 1990.

Church Letter:

5. A letter, dated June 19, 2006, from [REDACTED], General Pastor of the Iglesia de Dios Neopentecostes in San Rafael, California, stating that the applicant "is extremely important in this church and this started in 1981. He

started as a member when the church was called Iglesia de Dios Evangelio Completo, now the church's name is Iglesia de Dios Neopentecostes since 1989 he has been working full-time as a pastor..."

Other Documentation:

6. A fill-in-the-blank affidavit of residency, notarized on July 30, 1990, from [REDACTED] who identifies herself as a Manager, stating that the applicant resided at [REDACTED], San Rafael, California, from August 1984 to (illegible month) 1990.
7. A photocopy of a handwritten Western Union receipt dated February 15, 1982, showing the applicant's address as [REDACTED] San Rafael, California.
8. An affidavit, dated April 22, 1990, from [REDACTED], the applicant's brother, stating that the applicant traveled from the United States to Guatemala by car from July 10, 1987, to August 20, 1987, to visit family in Guatemala.
9. A photocopy of an envelope mailed to the applicant at the [REDACTED] address, postmarked January 15, 1984.
10. A Social Security Statement indicating that applicant's earnings in the United States from 1986 through 1989, and 1992 through 2000.

The employment letters (Nos. 1 through 4, above) provided do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to provide the applicant's address(es) at the time of employment; identify the exact period of employment; show periods of layoff, if any; 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 church letter (No. 5, above) provided does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v) in that it does not clearly indicate the inclusive dates of membership, show the address(es) where the applicant resided throughout the membership period, and establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records).

There are inconsistencies and discrepancies noted in information and documentation provided by the applicant. On a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), signed by the applicant on April 22, 1990, he indicated:

- He had lived at [REDACTED] in San Rafael from September 1981 to August 1984; and at [REDACTED], in San Rafael from August 1984 to April 1990. This calls into question the credibility of the photocopies of the handwritten Western Union receipt (No. 7) and envelope (No. 9) that show him living at the [REDACTED] address in February 1982 and January 1984.
- He had only been absent from the United States on one occasion during the requisite time period – from July 10, 1987, to August 20, 1987 - in order to visit family in Guatemala. However, a Form I-213, Record of Deportable Alien, contained in the record clearly reflects that when the applicant was apprehended by Border Patrol officers on October 14, 1990, he claimed that he permanently resided in Guatemala and had last entered the United States without inspection on September 13, 1986. Therefore, it appears that the applicant must have made a minimum of two departures from the United States during the period of his claimed residency in this country.
- He had not had any affiliations or associations with clubs, organizations, churches, unions, businesses, etc. during the requisite time period. This further calls into question the credibility of the church letter provided in No. 5.
- He had only been employed as a gardener at Heartwood in Sausalito from September 1981 to April 1990. This calls into question the credibility of the various employment letters provided in Nos. 1 through 4, none of which show “Heartwood” as the employer and only one of which indicates employment in Sausalito.

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

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

It is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. §

245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, the applicant has failed to submit proof of his identity pursuant to 8 C.F.R. §245a.2(d)(1).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

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