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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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FILE: [REDACTED]
MSC 03 196 61190

Office: CHICAGO, IL

Date: **JUL 07 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:

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, Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further consideration in accordance with the following analysis.

The director found that the record indicates that the applicant was in the United States in lawful status for at least part of the statutory period. Therefore, the director denied the application.

On appeal, the applicant indicated through counsel that he had violated his lawful status in a manner that was known to the government prior to January 1, 1982. Based on this, the applicant claimed that he had shown that he was not in lawful status at any time during the statutory period and that it was known to the government that he was not in lawful status. The applicant also indicated through counsel that the record establishes that he is otherwise eligible to adjust under the LIFE Act.

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

As a preliminary matter, the AAO notes that the director found the applicant eligible for class membership under the LIFE Act. Also, on September 9, 2008 the court approved a Stipulation of Settlement in the class action *Northwest Immigrant Rights Project, et al. vs. USCIS, et al.*, 88-CV-00379 JLR (W.D. Was.) (NWIRP).² Class members are defined, in relevant part, as:

1. Class Members [include] all persons who entered the United States in a nonimmigrant status prior to January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A of the INA [Immigration & Nationality Act], 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below in paragraph 2, and who –

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).

² All appeals filed with this office which turn on the question of whether an applicant’s unlawful status was known to the government throughout the statutory period and related issues were held for an extended period until the final terms of the NWIRP settlement were handed down. After that, this office began adjudicating these appeals in the order received. As a consequence, this appeal was not completed within the processing time that LIFE legalization appeals are usually completed.

(A) between May 5, 1987 and May 4, 1988, attempted to file a complete application for legalization under § 245A of the INA and fees to an Immigration and Naturalization Service (INS) officer or agent acting on behalf of the INS, including a Qualified Designated Agency (QDE), and whose applications were rejected for filing (hereinafter referred to as 'Subclass A members'); or

(B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible for legalization, or were refused legalization application forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to file or complete a timely written application (hereinafter referred to as 'Sub-class B' members); or

(C) filed a legalization application under INA § 245A and fees with an INS officer or agent acting on behalf of the INS, including a QDE, and whose application

- i. has not been finally adjudicated or whose temporary resident status has been proposed for termination (hereinafter referred to as 'Sub-class C.i. members'),
- ii. was denied or whose temporary resident status was terminated, where the INS or CIS action or inaction was because INS or CIS believed the applicant had failed to meet the 'known to the government' requirement, or the requirement that s/he demonstrate that his/her unlawful residence was continuous (hereinafter referred to as 'Sub-class C.ii members').

2. Enumerated Categories

- (1) Persons who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.
- (2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer reports of status violations) are not contained in the alien's A-file, and who are unable to meet the requirements of 8 C.F.R. §§ 245a.1(d) and 245a.2(d) without such records.
- (3) Persons whose facially valid 'lawful status' on or after January 1, 1982 was obtained by fraud or mistake, whether such 'lawful status' was the result of
 - (a) reinstatement to nonimmigrant status;
 - (b) change of nonimmigrant status pursuant to INA § 248;

- (c) adjustment of status pursuant to INA § 245; or
- (d) grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

The AAO finds that the applicant is a member of the NWIRP class as enumerated above and will adjudicate the application in accordance with the standards set forth in the settlement agreement.

NWIRP provides that LIFE legalization applications pending as of the date of the agreement shall be adjudicated in accordance with the adjudication standards described in paragraph 8B of the settlement agreement. Under those standards, the applicant must make a *prima facie* showing that prior to January 1, 1982, the applicant violated the terms of his or her nonimmigrant status in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government. It is presumed that the school or employer complied with the law and reported violations of status to the INS; the absence of such report in government records is not alone sufficient to rebut this presumption. Once the applicant makes such a showing, USCIS then has the burden of coming forward with proof to rebut the evidence that the applicant violated his or her status. If USCIS fails to carry this burden, the settlement agreement stipulates at paragraph 8B that it will be found that the alien's unlawful status was known to the government as of January 1, 1982. With respect to individuals who obtained their status by fraud or mistake, the applicant bears the burden of establishing that he or she obtained lawful status by fraud or mistake. The settlement agreement further stipulates that the general adjudicatory standards set forth in 8 C.F.R. § 245a.18(d) or 8 C.F.R. § 245a.2(k)(4), whichever is more favorable to the applicant, shall be followed to adjudicate the merits of the application once class membership is favorably determined.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

- (i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

See also 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

- (1) 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.

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993)(Zambrano). See 8 C.F.R. § 245a.10.

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).

The regulation at 8 C.F.R. § 245a.2(b) provides in pertinent part:

- (b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

. . .

- (9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

- (10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

Section 212(a)(6)(C) of the Act provides in pertinent part:

Misrepresentation. – (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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 the regulatory 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 June 11, 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 April 14, 2003, the applicant 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 decision in which he denied the application because he determined that the applicant’s entries into the United States as an F-1 student during the statutory period on August 23, 1984 and August 7, 1986 indicate that the applicant was in the United States in lawful status for at least a portion of the statutory period. The director found that the applicant did not provide sufficient evidence to support the claim that he violated his lawful status in a manner known to the government prior to January 1, 1982 and that he remained in unlawful status throughout the statutory period.

On appeal, the applicant stated through counsel that the U.S. Social Security Administration Records, which he provided, show that he was paying into Social Security and working in the United States during 1980 and previous years. Thus, it was known to the government prior to January 1, 1982 that he was an international student who was working without authorization and who was not in lawful status. He indicated that the F-1 student visa that he obtained in Reykjavik, Iceland on August 23, 1984 was not obtained lawfully, but instead was obtained by fraud or mistake, as he had already spent years working without authorization in the United States and consequently was not eligible for an F-1 visa at that point. The applicant stated that the entries into the United States which he made using that F-1 visa on August 23, 1984 and August 7, 1986 do not represent lawful entries. Rather, on those dates, he was entering the United States, not as a lawful nonimmigrant, but entering to return to an unrelinquished residence, and to continue working without authorization and living unlawfully in the United States. As such, he was in unlawful status throughout the entire statutory period.

The AAO concurs. *See* NWIRP settlement agreement, paragraph 8B.

On appeal, the applicant also indicated through counsel that the director erred when he stated that the applicant was no longer eligible for employment authorization in the United States as of the date of the notice of decision. The AAO concurs. The regulation at 8 C.F.R. § 245a.20(a)(2) indicates that employment authorization that is issued pursuant to 8 C.F.R. § 245a.13 will be continually renewed during LIFE legalization proceedings *until a final decision has been rendered on appeal*, or until the end of the appeal period if no appeal is filed. Thus, the AAO withdraws the point in the notice of decision which indicates that the applicant’s employment authorization expired the date of that notice. The AAO also notes that USCIS records indicate that the applicant has successfully renewed the Form I-765, Employment Authorization Document, each year since filing the Form I-485.

On appeal, the applicant also indicated that the evidence of record establishes that he is otherwise eligible to adjust under the late legalization provisions of the LIFE Act.

The notice of intent to dismiss issued May 7, 2009 by this office stated that the 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; that he is admissible to the United States; and that he is otherwise eligible to adjust under the LIFE Act.

As stated in the notice of intent to dismiss, the record includes the following adverse or inconsistent evidence regarding these points:

1. The Form I-687 that the applicant signed under penalty of perjury on June 5, 1990 on which he indicated at item 33 that he began residing continuously in the United States during January 1984.
2. The Form I-687 that the applicant signed on June 5, 1990 on which he stated at item 36 that he taught at Illinois State University (ISU) from August 1980 through December 1981.
3. The Form I-687 that the applicant signed under penalty of perjury on November 23, 2005 on which he stated on page 7, at item 33 that he taught at ISU from August 1981 through December 1982.
4. The ISU transcript in the record which indicates that the applicant was enrolled in graduate classes in Fall 1980 through Summer 1981. At the top of page 2 of the transcript is the notation indicating that that page is the second of the two pages which comprise the complete transcript. A third page issued by ISU follows. This page indicates that the applicant enrolled in graduate classes during Fall 1981; however, the applicant did not receive any grades, and the transcript indicates that he withdrew from classes before earning any grades or completing the term.
5. The Western Illinois University (WIU) transcript in the record on which WIU notes that the applicant attended ISU from Fall 1980 *through Summer 1981*, prior to enrolling at WIU.
6. The letter written by [REDACTED] of ISU, University Housing Services on ISU letterhead dated November 9, 2005 which indicates that the applicant resided in ISU housing/[REDACTED] from Fall 1978 through and including Fall 1981. The letter does not indicate whether [REDACTED] has personal knowledge that the applicant resided at [REDACTED] during that period. Also, the letter does not indicate when the applicant moved from [REDACTED].

7. The applicant's statement regarding his absences during the statutory period which he submitted with the Form I-687 filed on December 5, 2005. This statement indicates that during 1986, the applicant was absent from the United States from June 25, 1986 through August 7, 1986 and from July 23, 1984 through August 23, 1984.
8. The copy of the applicant's passport # [REDACTED] in the record which indicates that this passport was issued to him in Washington, D.C. on June 9, 1986, and that on June 24, 1986, while in Chicago, the applicant received a visa to visit Germany. Thus, the information in the passport indicates that on June 9, 1986 and June 24, 1986 the applicant was in the United States.
9. The original Form I-94 which indicates that the applicant entered the United States at Chicago on August 7, 1986.
10. The Form I-687 which the applicant signed on June 5, 1990 on which he stated at item 35 that he was absent from the United States from May 1986 through August 1986.
11. The affidavit for determination of class membership which the applicant signed on June 11, 1990 on which he indicated that he departed the United States during May 1986 and returned during August 1986.
12. The Form I-690, Application for Waiver of Grounds of Excludability, on which the applicant requested that the director waive the ground of inadmissibility to which he is subject based on "visa invalidation". The form does not include any supporting documentation or stated reasons why the request should be granted. The Form I-690 has not been adjudicated.

The AAO stated in the notice of intent to dismiss that within the record is inconsistent information regarding whether the applicant was absent from the United States for over 45 days in one absence during 1986. As such, it is not clear whether he resided continuously in the United States throughout 1986. *See* 8 C.F.R. § 245a.15(c).

The notice of intent to dismiss also stated that in the record is inconsistent information in support of the claim that the applicant worked as a teacher at ISU during the period just prior to January 1, 1982. This casts doubt on the claim that the applicant was a teacher during this period. This in turn casts doubt on the claim that he was present in the United States just prior to January 1, 1982. In addition, the record indicates that the applicant enrolled, but then withdrew from classes at ISU during Fall 1981. Thus, it is not clear whether he was attending classes during the period just prior to January 1, 1982. This casts further doubt on the claim that he remained in the United States during this period, and prior to when his classes began during the 1982 spring term (January through June) at WIU. Ms. [REDACTED] of ISU did not specify in her letter on what she based the claims that the applicant resided at

██████████ through Fall 1981. Also she did not state that she has knowledge of the date that the applicant moved from ██████████

Thus, the AAO stated in the notice of intent to dismiss that the applicant failed to provide a consistent account to support his claim that he resided continuously in the United States from a date just prior to January 1, 1982 and throughout the statutory period.

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 from a date prior to January 1, 1982.

In response to the notice of intent to dismiss the applicant did present objective, independent evidence to establish that he resided continuously in the United States throughout the statutory period. For example, he submitted:

- Copies of the front and back of checks and of a pre-printed bank deposit slip which the applicant wrote during, for example, October 1981, November 1981 and December 1981. These documents were stamped as processed by the applicant's bank in Normal, Illinois during October, November and December of 1981. Based on this evidence, the AAO finds that the applicant has overcome any discrepancies in the record related to whether he was in the United States during the months just prior to January 1982 and discrepancies related to his claim that his continuous residence in the United States includes the period just prior to January 1, 1982.
- Copies of pages of the applicant's passport which establish that on June 24, 1986 the applicant received a visa to visit Iceland while at the Embassy of Iceland in Chicago, and that on the same date he received a visa to visit Germany while at the German Embassy in Chicago. The passport also includes an admission stamp that confirms that the applicant entered the United States at Chicago on August 7, 1986. The applicant indicated through counsel that this contemporaneous evidence in the record establishes that at most he was absent from the United States from June 24, 1986 through August 7, 1986, or 44 days. Based on this evidence, the AAO finds that the applicant has overcome any discrepancies in the record related to whether he was absent from the United States for over 45 days during 1986.

- The applicant submitted checks, deposit slips, original transcripts and other contemporaneous evidence which establish that he resided in the United States throughout the relevant period. Thus, the applicant has overcome any entry on the Form I-687 which indicates that he did not have an address in the United States until 1984.

The applicant has established that he resided continuously in the United States throughout the statutory period.

The AAO also stated in the notice of intent to dismiss that the record establishes that on August 23, 1984 and August 7, 1986, the applicant presented himself as a lawful, nonimmigrant, F-1 student upon admission to the United States. Yet, according to the claims made in this proceeding, the applicant's intent upon returning in 1984 and 1986 was to continue working without authorization and to continue residing unlawfully in the United States. Thus, in 1984 and in 1986, the applicant procured entry into the United States by willfully misrepresenting a material fact. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 is admissible to the United States. *See* 8 C.F.R. § 245a.12(e). The applicant might only overcome this particular ground of inadmissibility if he applies for and secures a waiver for the ground of inadmissibility at issue in the matter. *See* 8 C.F.R. § 245a.18(c). The applicant must make such request for a waiver on the Form I-690. The AAO stated in the notice of intent to dismiss that the applicant had filed the Form I-690, but had not provided reasons why that request should be granted and had not provided documentation to support the request. The director has not yet adjudicated that form. This office provided the applicant the opportunity to provide information to support his request for a waiver.

In response to the notice of intent to dismiss, the applicant submitted documentation to support the request set forth on the Form I-690. He also filed a new Form I-690 with the director in the event that the director needed the current version of the form. He requested through counsel that the fee submitted with that form be returned to him by this office if the more current form is not required.

This office has no jurisdiction over the initial filing of the Form I-690 or over any fees filed with that form.

The AAO will however request that the director consider the applicant's stated bases for granting his request for a waiver of any grounds of inadmissibility which the director finds applicable in this matter. The applicant's stated reasons for which he believes that he is eligible for a waiver include:

- *Public interest basis.* The applicant's research may lead to the prevention of renal failure in diabetes patients and the research may be halted if the applicant loses employment authorization and thus the ability to continue as a Research Assistant Professor at Rosalind Franklin University of Medicine and Science, Chicago, Illinois. *See* letter of [REDACTED], Professor

at Franklin University and Director of Research Baxter Healthcare and letter of [REDACTED], the applicant's immediate supervisor at Franklin University. *See also* list of the applicant's publications and a copy of the May 2009 article in American Journal of Pathology in which the applicant is the lead researcher.

- *Family unity basis.* The applicant's household consists of: the applicant; his sister, who is a U.S. citizen, a teacher and a single mother; and the applicant's nephew who is a U.S. citizen and a college student. This sister and nephew rely on the applicant's salary to meet living expenses and college expenses. *See* the affidavit of the applicant's sister in which she attests that she relies on the applicant for financial and emotional support, and that the applicant is a father figure to her son.
- *Humanitarian basis.* The applicant has been in the United States for over 33 years. This is where his family unit is, namely his sister and nephew. The applicant currently has no home to which to return in Iran. Iran is experiencing considerable turmoil as a result of the disputed June 12, 2009 elections.

When adjudicating the Form I-690, the director shall consider the 24 supporting documents, Exhibits 6 through 9(e), attached to the reply to the notice of intent to dismiss, which relate to this request.

The applicant has provided all the documents requested in the notice of intent to dismiss, including the original letter written by [REDACTED] of ISU dated August 25, 2006, and original transcripts from ISU, WIU and IIT.

The applicant has established continuous residence in the United States throughout the statutory period.

The AAO remands the matter to the director that he might adjudicate the Form I-690 and determine if the applicant is eligible for a waiver of the grounds of inadmissibility that apply in this case and otherwise complete the *adjudication of this application*.

ORDER: The application is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the applicant, is to be certified to the AAO for review.