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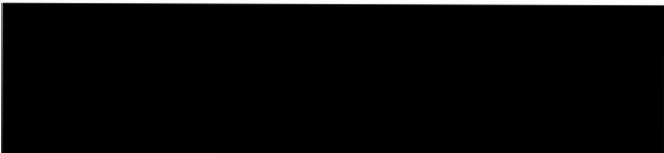
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

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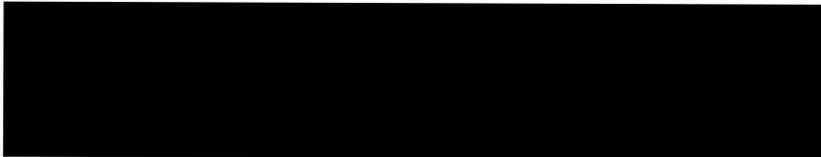
FILE: [REDACTED] Office: HOUSTON Date:
MSC 02 087 60186

JUN 10 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 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.

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 Houston, Texas. 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 meets the continuous residence requirement 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.” (Emphasis added.) 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 Austria who claims to have lived in the United States from before January 1, 1982, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on December 26, 2001.

In a Notice of Intent to Deny (NOID), dated February 20, 2003, the director cited inconsistencies between the applicant’s oral testimonies and documentation in the record regarding his initial entry into the United States and his continuous residence in the country during the requisite period. The director indicated that the documentation in the record lacked sufficient probative value and credibility to establish the applicant’s continuous residence in the United States during the requisite period for LIFE legalization. The applicant was granted 30 days to submit additional information.

The applicant timely responded by offering some explanations and additional documentation to address the evidentiary inconsistencies cited in the NOID. On May 30, 2003, however, the director issued a Notice of Denial denying the application on the ground that the information and documentation submitted in response to the NOID were 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 submitted additional documentation with the appeal.

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 record reflects that the applicant submitted conflicting information and documentation regarding his initial entry into the United States and his continuous residence in the country through the requisite period. At his LIFE legalization interview on November 12, 2003, the applicant stated that he entered the United States in October 1981 with a valid visitor's visa, and that he made one trip outside the United States in 1986 for a period of four weeks, and returned to the United States with a valid visitor's visa. At his legalization interview on June 12, 1992, the applicant stated that he entered the United States in 1980 with a valid visitor's visa, that he left the country at the end of his legal authorization to remain in the United States, and that he returned to the United States in February 1981 with a valid B-2 visa. On the Form I-687 (application for status as a temporary resident) dated June 10, 1990, and May 1, 2003, as well as on the Affidavit For Determination of Class Membership in League of United Latin American Citizens v. INS (LULAC), dated June 10, 1990, the applicant stated that he entered the United States in October 1981, traveled outside the United States in January 1986 and returned to the United States in February 1986, with a valid visitor's visa.

A review of records from United States Citizenship and Immigration services (USCIS) shows that the applicant was issued a passport in Austria on August 21, 1985, and a multiple entry B-1/B-2 visa at the United States Embassy in Vienna, Austria on January 22, 1986, valid indefinitely, which the applicant used to enter the United States on February 27, 1986. The applicant did not submit and the record does not show any of the prior entries stated by the applicant. The director notified the applicant of the inconsistencies regarding his initial entry into the United States. In response, the applicant claimed that he renewed his passport in Austria by mail while residing in the United States. He submitted a letter from the City of Moosdorf stating that it is possible to apply for a passport by mail through the local authority where the citizen is registered. The letter clearly shows that an individual must be residing within the jurisdiction at the time he or she applied for a passport by mail. This letter suggests that the applicant was in Moosdorf at the time he was issued a passport in 1985. Furthermore, the applicant did not submit any documentation and the record does not reflect that the applicant applied for and was issued a passport while residing in the United States. Therefore the applicant's claim that he was residing in the United States at the time he was issued a passport in Moosdorf is not credible.

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.*

In the absence of any credible evidence of the applicant's prior entries into the United States, and the conflicting statements provided by the applicant of his entry into the United States, it appears that his documented entry on February 27, 1986 is the first time the applicant entered the United States. Therefore, the AAO will accept documentation submitted by the applicant from 1986 onwards as credible evidence of his residence in the United States from February 1986 through May 4, 1988, and will focus its review on documentation submitted by the applicant from before January 1, 1982 through January 1986 to determine whether it is sufficient to establish the applicant's continuous residence requirement for legalization under the LIFE Act.

The record includes (1) a letter from [REDACTED], president of General Specialties, Incorporated (GSI), dated June 10, 1983, stating that the applicant completed several new construction and remodeling jobs for the company from December 1981 to April 1982; (2) a letter from [REDACTED], president of Euroco in Houston, Texas, dated June 4, 1990, stating that the applicant worked as a contractor for the company, producing packing cases for the company's export products from April 1982 until summer of 1985, that the company merged with Swages & Fittings in the summer of 1985, and that the applicant continued his contracting work with the new company. **The letter did not specify the duration of the employment relationship with the applicant;** (3) an employment verification letter from [REDACTED] of Gulf Ventures Inc., dated September 28, 1991, acknowledging receipt of the applicant's application for employment with the company and notifying the applicant that the company did not have any opening for his qualification; (3) a memo from [REDACTED] of Hoffman International, Inc. dated "16/11/83" notifying the applicant that his commission check for May in the amount of \$833.25 was enclosed for sales up to May 25, 1983, and that his sales to Mexico will be paid "on next months check."

The regulation at 8 C. F. R. § 255.a(d)(3)(i) specifies that past employment records, may consist of pay stubs, W-2 Forms, certification of the filing of Federal income tax returns on IRS Form 6166, state verification of the filing of the state income tax returns, letters from employer(s) or, if the applicant has been in business for himself or herself, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include: (a) alien's address at the time of employment; (b) exact period of employment; (c) periods of layoff; (d) duties with the company; (e) whether or not the information was taken from official company records; and (f) where such records are located and whether the Service may have access to the records. None of the letters listed above meet the regulatory requirements listed above. The applicant did not list GSI and Hoffman International,

Inc. as any of his employers during the 1980s. Furthermore, the employment documentation is not supplemented by any earnings statements, W-2 Forms, Pay stubs or certification of filing with the federal or state authorities. In view of the substantive deficiencies and inconsistencies noted above, the AAO finds the employment documentation to be suspect, not credible and of little probative value. Thus, the employment documentation is not persuasive evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through January 1986.

The record also include two photocopied residential lease agreement between the applicant and [REDACTED] as landlord at [REDACTED] for apartment # [REDACTED], for periods November 1, 1981 to November 1, 1983. The original is not in the file for verification. The photocopied residential lease agreements, do not include notarial stamps or other official markings to authenticate the dates indicated on the leases. Nor are the leases supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the Houston, Texas, address during the years indicated. The applicant submitted few photocopied generic receipts signed by [REDACTED], allegedly for rent, however, the receipts did not identify the address of the rental property for which rent was collected. In view of these substantive deficiencies, and the inconsistencies noted above, the residential lease agreements have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1986 to 1988.

As discussed above, the applicant has submitted conflicting statements and documents in support of his application. The applicant has not provided any objective evidence to justify and reconcile the contradictions. Therefore, the remaining documentation in the record consisting of – photocopied retail, merchandise and hotel receipts – is suspect and not credible. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

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.