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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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U.S. Citizenship
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FILE: [REDACTED]
MSC 03 239 63725

Office: GARDEN CITY

Date: JUN 26 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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.

A handwritten signature in black ink, appearing to read "John H. Grissom".

John H. Grissom
Acting Director, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the application on the basis that the applicant failed to submit credible documentation to establish that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant submits additional documentation.

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 states 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 or 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 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 record contains 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 May 23, 1993. On the application, the applicant, a native and citizen of Uruguay, claimed to have initially entered the United States without inspection along the U.S./Mexico border, and to have departed the United States on only one occasion during the requisite time period - from November 18, 1987 to December 24, 1987 - in order to travel to Uruguay to get married; to have been employed as a grill man by El Tata Restaurant in Jackson Heights, New York, from December 1981 to August 1991, and by La Fusta Restaurant in Elmhurst, New York, since August 1991; to have lived at [REDACTED], Flushing, New York, from November 1981 to October 1986, and at [REDACTED] Jersey City, New Jersey, since October 1986; and, to have been affiliated with The Lions Sunnyside in Rego Park, New York, since December 1981, and Association of Nuestra Sra. Del Lujan in New York, New York, since September 1982.

In support of the application, the applicant submitted a variety of documentation regarding his addresses, affiliations, absence from, and employment in the United States, during the requisite time period. For the most part, the documents submitted were notarized, signed originals, accompanied

by documentation identifying the affiants, their addresses and contact information. All of the information provided by the affiants was consistent with the information provided by the applicant on his Form I-687.

The applicant filed the current Form I-485, Application to Register Permanent Residence or Adjust Status, on May 27, 2003, and was interviewed in connection with his application on January 7, 2005. In a Notice of Intent to Deny (NOID) the application, dated July 30, 2007, the director dismissed the documentation submitted by the applicant as not credible in that not all of the affiants had provided proof of their identities, that they were in the United States during the requisite time period, had direct and personal knowledge of the events being attested to, or had provided contact information for verification purposes. The director also found that, given the stated insufficiencies in the affidavits provided, the applicant had failed to overcome the unavailability of both primary and secondary evidence. The applicant was afforded 30 days in which to submit additional documentation. The record reflects that the applicant failed to respond to the NOID; therefore, the director denied the application on September 14, 2007, on the basis of the reasons stated in the NOID. The applicant timely filed the current appeal from that decision on October 17, 2007.

On appeal, the applicant provides additional documentation, including additional up-dated, notarized, original signed affidavits from previous, as well as new, affiants.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence whether his claim of entry into the United States before January 1, 1982, and continuous residence in the United States throughout the requisite period, is probably true.

Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds the original documentation submitted by the applicant, and the documentation submitted by the applicant on appeal, to be persuasive.

The applicant's presence in the United States prior to January 1, 1982, and his continuous presence in the United States since that time, has been documented by numerous credible affidavits. For the most part, the affidavits include contact addresses and telephone numbers and are amenable to verification. The up-dated affidavits are signed, under penalty of perjury, and the affiants have asserted their willingness to personally verify the information provided.

The applicant has consistently asserted that he first entered the United States in November 1981 and has resided continuously here in an unlawful status since that date. He listed his initial entry date as November 1981 on his Form I-687 and several of the credible, verifiable affidavits in the record also corroborate this information.

The director has not found that the information on the many supporting documents in the record are inconsistent with the applicant's testimony or with the claims made on his Form I-687 and Form I-485; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has submitted several detailed, credible, and verifiable affidavits consistent with this information. The specific, detailed information contained in these affidavits corroborates the information provided by the applicant in his statements and application forms regarding his continuous unlawful residence in the United States since November 1981. The fact that the applicant was able to obtain affidavits from the same affiants in the late 1980's and subsequently in 2007 indicates his continuing relationship with them, and substantiates their claims of personal knowledge of the applicant's continuous residence and physical presence during the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that he satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.)

Therefore, based on the above, the applicant has established entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. He has also established that he is in all other ways eligible to adjust status. Given this, he is eligible for permanent resident status under Section 1104 of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.