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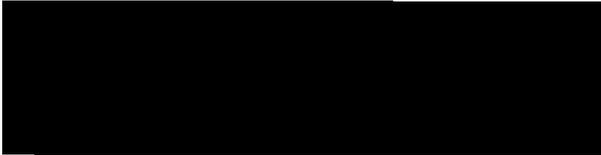
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

L2



FILE:

[Redacted]
MSC 02 208 61408

Offices: HOUSTON

Date:

MAY 06 2009

IN RE: Applicant:



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. 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 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 the applicant asserts that he has submitted sufficient documentation to establish his continuous residence in the United States for the period required for legalization under the LIFE Act.

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.” (Emphases added.)

“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.” (Emphasis added.) 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 Guatemala who claims to have lived in the United States since January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 26, 2002.

In a Notice of Intent to Deny (NOID), March 13, 2007, the director indicated that the applicant had not submitted credible evidence to establish that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant did not submit a rebuttal and on April 18, 2007, the director issued a Notice of Denial denying the application based on the grounds stated in the NOID.

On appeal, the applicant asserted that he did not receive the NOID dated March 13, 2007, and could not have responded to it. The applicant father asserted that he is unaware the reasons for the denial of his application. On December 2, 2008, the AAO issued a new NOID, notifying the applicant of the insufficiency of evidence in the record and granted him 30 days to submit additional documentation. The applicant timely responded and submitted additional documentation in the form of photocopied photographs, photocopied retail and other forms of receipts, photocopied envelopes with foreign metered postage stamps addressed to the applicant at his address in Alice,

Texas, as well as additional affidavits in support of his application. The AAO will evaluate all the documentation in the record to determine whether the applicant has met his requirement of continuous residence in the United States from before January 1, 1982 through May 4, 1988.

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 documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988 consists of the following:

- A notarized letter of employment and residence from [REDACTED] dated October 21, 1990, stating that the applicant was employed at her Ranch from January 1981 to August 1990, that she paid the applicant \$20.00 a day in cash, and that she provided room and board to the applicant at the Ranch during the period of his employment.
Photocopied retail, merchandise and other forms of receipts with handwritten notation of the applicant's name and no address, dated in the 1980s.
Photocopied photographs purportedly of the applicant and other people, which the applicant indicated were taken in Disney World, Florida in November 1981.
- Series of notarized letters – dated in 1990, and 2008 – from individuals who claim to have known the applicant resided in the United States during the 1980s. Photocopied envelopes addressed to the applicant at [REDACTED] Texas, bearing foreign metered postage stamps, with postmarks that appear to be dated from 1981 to 1988.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

The notarized letter of employment and residence from [REDACTED] does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the letter did not indicate whether the information about the applicant's employment was taken from company records, and did not indicate whether such records are available for review. The letter did not provide a description of the applicant's duties. Although the letter indicated that the applicant was employed from January 1981 to August 1990, with periods of lay offs, the applicant stated on the Form I-687 (application for status as a temporary resident) he filed on May 29, 1991, that he was employed by [REDACTED] from January 1982 to August 1990. This information casts some doubt on the veracity and credibility of the employment document as evidence of the applicant's continuous residence in the United States during the statutory period. The letter is not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the

applicant was actually employed during any of the years claimed. [REDACTED] also stated that she provided room and board to the applicant during the period, but there is no documentation such as a rental agreement to verify that he applicant did reside at the address as indicated. Furthermore, [REDACTED] did not provide any documentation to establish that she was in the United States and owned the property during the period she claimed she employed and housed the applicant. Thus, the employment and resident document has limited probative value. It is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The letters in the record from individuals who claim to have known that he applicant resided in the United States during the 1980s, have minimalist and similarly worded formats with very little information about the applicant's life in the United States, such as where he worked, and the nature and extent of her interaction with the authors over the years. The letters are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the letters have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The photocopied envelopes addressed to the applicant at [REDACTED], bear foreign metered postage stamps, with postmarks that appear to date from the 1980s (1981-1988) have marginal evidentiary weight. There are no United States postal stamps to show that the envelopes were processed and delivered to the applicant in the United States. Also, some of the envelopes have postmarks which appear to have been altered by hand, and since the original envelopes are not in the file, it is impossible to determine the dates of the postmarks with any certainty. Thus, the photocopied letter envelopes have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The various photocopied receipts, bearing dates from 1982 to 1988, all have handwritten notations with no stamps or other official markings to authenticate the dates they were written. Some of the receipts do not identify the applicant's complete name and address. The receipt from Texas Department of Public Safety, dated November 24, 1986, for an identification card, has the applicant's address as [REDACTED] while the applicant stated his address for the same period was [REDACTED]. And the receipt from Clinica Del Sol, dated June 21, 1986, does not have the applicant's address. None of the receipts date from before January 1, 1982. Given these substantive deficiencies, and possible fraud, the receipts have no probative values as credible evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The photocopied photographs submitted by the applicant are of little probative value as evidence of the applicant's residence in the United States from before January 1, 1982 through May 4, 1988 because while the photographs have hand written notations by the applicant indicating that they were taken in Disney World in Orlando, Florida in November 1981, none had a date stamp or other indication on the photographs as to when and where they were taken.

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, and resided continuously in the United States in an unlawful status 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.