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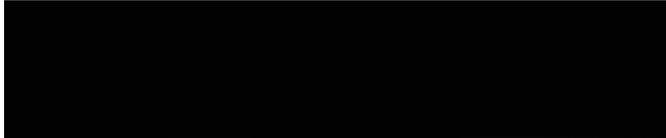
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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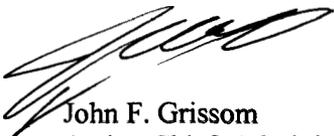
FILE: [REDACTED] Office: NEW YORK CITY Date: MAY 06 2009  
MSC 01 303 60956

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:  
[REDACTED]

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 New York City. 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 applicant has submitted sufficient credible evidence to establish that he 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.” (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 the Colombia 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 July 30, 2001.

In a Notice of Intent to Deny (NOID), dated September 22, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through the period required for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

The applicant timely responded to the NOID and submitted additional documentation. On January 29, 2008, the director issued a Notice of Decision, 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 applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for LIFE legalization. Counsel submitted no 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate 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. The AAO determines that he has not.

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 the requisite period for LIFE legalization, consists of the following:

An affidavit by [REDACTED], owner of Rico Pan Bakery in Woodside New York, dated October 9, 2007, stating that the applicant was employed from November 1983 to January 1984.

- Two letters from [REDACTED] of Arc Rectory in Jackson Heights, New York, dated June 26, 2004 and October 9, 2007, stating that the applicant has been a member of the parish in good standing and attended services frequently. A series of affidavits – dated in 1991, 2004, and 2007 – from individuals who claim to have worked with, resided with or otherwise have known the applicant in the United States during the 1980s.
- Various retail, money order, merchandise, U.S. Postal, and other forms of receipts, bearing dates from 1986 to 1988, with handwritten notations of the applicant's name. Some of the receipts do not identify the applicant's complete name and address.
- Several envelopes addresses to the applicant at [REDACTED], Woodside, New York, from individuals in Colombia, South America, bearing foreign postmark dates form 1986 to 1988.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The documentation submitted is not probative and credible.

The affidavits of employment by [REDACTED], owner of Rico pan Bakery, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address during the periods of employment and did not indicate whether there were periods of layoff. The affiant did not indicate whether the information about the applicant's employment was based on company records and whether such records are available for review. The affidavits are not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant actually employed during the periods indicated. The AAO notes that the applicant did not indicate on the Form I-687 (application for status as a temporary

resident) dated October 2, 1991, that he was employed by [REDACTED] at any time during the 1980s. In addition, according to the New York States Department of Corporation, Rico Pan Bakery, Inc. was not incorporated as a business until November 6, 2001. Therefore, it is impossible that the applicant would have been employed in 1983 and 1984 by a company that was not in existence at the time. Thus, the affidavit by [REDACTED] is suspect. In view of the substantive deficiencies and possible fraud, the affidavit of employment has limited probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The letters from [REDACTED] of Arc Rectory does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letters were signed by a Reverend whose full name was not discernable, merely stated that the applicant had been a member of the parish and have been attending services at the church, but did not indicate when and how the applicant became a member, or where the applicant lived at any point in time between 1981 and 1988. Nor did the Reverend indicate how and when he met the applicant, and whether his information about the applicant was based on personal knowledge, the church's records, or hearsay. Since the letter did not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value. The letters are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits in the record by individuals, who claim to have worked with, resided with or otherwise have known the applicant resided in the United States during the 1980s, have minimalist formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provide remarkably little information about the applicant's life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the affidavits 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.

Most of the envelopes in the record have foreign stamps and postmarks dating from 1986. The envelopes do not bear a United States Postal date stamps to indicate that the envelopes were processed in the United States and were delivered to the applicant as addressed. One of the envelopes bearing a United States postal stamp with a postmark date of May 9, 1986, addressed to the applicant at [REDACTED], Jackson Heights, New York, does not appear to be genuine. The address on the envelope is contrary to the address provided by the applicant on the Form

I-687 in the file. According to the form, the applicant indicated that his residential address during the year 1986 was [REDACTED]. There is no indication in the record that the applicant resided at the Woodside, New York, address at any time during the 1980s. Also, none of the envelopes dated from before January 1, 1982. Therefore, the envelopes have limited probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the receipts in the record, some have handwritten notations of the applicant's name, no address and no stamp or other official marking to verify the dates they were written. The earliest date on the receipts was 1986, and none of the receipts dated from before January 1, 1982. Thus, the receipts have limited probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Beyond the decision of the director, the applicant stated at his interview on July 13, 2004, and on a Sworn Statement dated June 1, 2006, that he entered the United States in 1981, left the United States in 1985 to Colombia and reentered the United States in 1987 – a total absence of about two years. This absence from the United States far exceeded the 45-day maximum for a single absence and an aggregate of 180 days of all absences from the United States prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being." The applicant has not established that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from Colombia within the 45-day period allowed in the regulation. Thus, the applicant's trip to Colombia from 1985 to 1987 would have interrupted his continuous residence in the United States. On this ground as well, therefore, the applicant has failed to establish his eligibility for legalization under the LIFE Act.

For the reasons discussed above, 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.