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FILE: [REDACTED] Office: DENVER Date: MAY 06 2009  
MSC 03 227 61088

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 Denver, Colorado. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the grounds that the applicant 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 May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal, counsel asserts that the director did not properly evaluate the evidence submitted by the applicant. Counsel asserts that the applicant submitted sufficient credible evidence that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status, and was continuously physically present in the country, during the requisite periods 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(c).

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 Mexico 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 May 15, 2003.

In a Notice of Intent to Deny (NOID), dated December 19, 2006, the director indicated that the applicant had not submitted sufficient credible evidence to establish his entry into the United States before January 1, 1982, his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1988 through May 4, 1988. The director cited inconsistencies in the documentation submitted by the applicant regarding his residential addresses in the United States during part of the requisite periods, which call into question the credibility of those documents and the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite periods. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, the applicant submitted a personal affidavit providing some explanations for the evidentiary discrepancies cited in the NOID. The applicant submitted no documentation with the response. On April 3, 2007, the director issued a decision denying the

application on the ground that the information submitted in response to the NOID was insufficient to overcome the grounds for denial.

On appeal counsel reasserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence and continuous physical presence requirements for legalization under the LIFE Act. Counsel submits no additional evidence 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, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he was continuously resident and continuously physically present in the United States during the requisite periods for LIFE legalization consists of the following:

A letter of employment from [REDACTED], Office Supervisor at The Valley Schools in Van Nuys, California, dated December 18, 2003, stating that the applicant was employed from March 12, 1986 through December 18, 2003, that the applicant was part of the kitchen administration during the school year and that he worked in maintenance during summer session.

- Copies of Form W-2 Wage and Tax Statements from The Valley Schools for the years 1986 and 1987, as well as Earnings Statements from The Valley Schools for the years 1986 to 1988
- Copies of Form 1040A U.S. Individual Income Tax Returns and Form 540A California Short Tax Forms for the years 1986 to 1988
- Several receipts – postage and money order – with the applicant's name and address, dated in 1987.
- A copy of the State of California Identity Card in the applicant's name and an issue date of March 10, 1986.
- A notarized letter from [REDACTED], dated August 11, 1990, stating that the applicant resided in the United States since January 1981, and that he was aware that the applicant left the United States and traveled to Mexico on May 15, 1987 and returned on May 28, 1987. [REDACTED] stated that he and the applicant traveled together to Mexico because "our mother was very ill."

- An affidavit by [REDACTED], sworn to on May 25, 2006, attesting that she had known the applicant since their childhood, and that the applicant resided with her from June 1982 to November 1985, in Dallas, Texas. Photocopies of the first page of Form 1040 U.S. Individual Income Tax Returns of [REDACTED], listing the applicant as one of his dependents for the tax years 1982, 1983, and 1984.
- A copy of an American Airline ticket from Dallas Ft Worth to Los Angeles, with the name [REDACTED] and an issue date of December 24, 1985. A copy of a temporary permit from Texas Department of Public Safety signed by the applicant and dated October 18, 1985.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The AAO determines that the letter of employment from The Valley Schools, copies of Form W-2 Wage and Tax Statements and Earnings Statements from The Valley Schools, copies of Form 1040A U.S. Individual Income Tax Returns as well as copies of Form 540A California Short Tax Forms for the years 1986 to 1988, which the applicant submitted in support of his application, is sufficient credible evidence to establish that the applicant resided and was physical present in the United States during part of the statutory period – from 1986 through 1988. The AAO will focus its analysis in this proceeding on evidence submitted by the applicant in support of his residence and physical presence in the United States from before January 1, 1982 through 1985.

The notarized letter from [REDACTED] and the affidavit from [REDACTED], have minimalist formats with very little details about the applicant. For individuals claiming to be related to the applicant, they provided very little details about the applicant's life in the United States and the nature and extent of their interactions with the applicant over the years. Nor are the letter and affidavit 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. The affidavit from [REDACTED] claims that the applicant resided with her from 1982 to 1985, but did not indicate the address. In addition, the affidavit is inconsistent with the Forms 1040 from [REDACTED] claiming that the applicant was his dependent and resided with him during the same time period. In the NOID, the director cited this inconsistency in the applicant's residential address and granted the applicant the opportunity to provide objective evidence to justify or reconcile the discrepancy. The applicant submitted a personal affidavit providing some explanations for the noted inconsistency and cited to the copies of the Form 1040 from [REDACTED] as evidence that he resided with [REDACTED] and not with [REDACTED].

The response by the applicant did not address the inconsistency noted by the director, rather the documents cited to cast more doubt on the credibility of the tax documents as evidence of the applicant's continuous residence in the United States during the periods 1982 to 1985. The copies of the Form 1040 from [REDACTED] do not appear to be genuine. For example, the 1982 Form 1040 claimed the applicant as his dependent and indicated that the applicant resided with him in his home for 12 months. [REDACTED] indicated his residential address as [REDACTED] Ridgeway, Chicago. However, on the Form I-687 (application for status as a temporary resident)

dated August 13, 1990, the applicant indicated his residential addresses during the same period as follows: [REDACTED], from January 1981 to May 1982; and [REDACTED]

Dallas, Texas, from June 1982 to April 1985. The applicant did not claim the [REDACTED] Ridgeway, Chicago address as any of his addresses in the United States during the 1980s. The 1983 Form 1040 claimed the applicant as one of his dependents, who resided with him for 12 months. A review of the form shows that the applicant's name was not part of the original filing but may have been added at a later time. The applicant's name was written in the area other than where designated for the taxpayer to provide information about dependents. [REDACTED] had listed the names of [REDACTED] and [REDACTED] in the designated area for dependents. On the right column of question 6d, where the taxpayer is required to enter the number of other dependents, [REDACTED] wrote 2, which did not account for the applicant as one of his dependents. The questionable documents cast doubt on the credibility of the Forms 1040 submitted by the applicant as evidence that he resided with [REDACTED] during the years 1981 to 1985, and call into serious question the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

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. *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.*

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit credible and objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence – consisting of a copy of an American Airline ticket dated December 24, 1985, and a copy of a temporary permit from Texas Department of Public Safety signed by the applicant and dated October 18, 1985 – is suspect and not credible.

Although the applicant has provided credible evidence of his residence and physical presence in the United States from 1986 through 1988, he has failed to provide sufficient credible evidence to establish by a preponderance of the evidence his continuous residence from before January 1, 1982 through 1985. The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under section 1104 of 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.