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U.S. Citizenship and Immigration Service
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: TAMPA Date: MAY 22 2009
MSC 02 113 64799

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 Tampa, Florida. 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 had not submitted sufficient credible evidence to establish that he meets the continuous residence requirement for LIFE legalization.

On appeal, counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the evidence in the record is sufficient to establish that the applicant meets the continuous residence requirement.

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."

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 applicant, a native of Mexico who claims to have lived in the United States since July 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on January 21, 2002. It is noted that the applicant was about 8 years old in 1981, at the time he claims to have entered the United States.

The record reflects that in October 1997, the applicant left the United States for Mexico pursuant to a voluntary departure order. On June 20, 1999, the applicant attempted to re-enter the United States falsely claiming to be a United States Citizen. On June 21, 1991, the applicant was expeditiously removed from the United States. The applicant subsequently returned to the United States without prior authorization and remained illegally in the country. Following his LIFE interview on February 4, 2004, the applicant was issued a Request for Evidence (RFE) of all court dispositions and to submit a Form I-690 application for a waiver for using fraudulent document to attempt to enter the United States in 1999 and for returning to the United States after deportation without prior approval. The record reflects that the applicant submitted the requested court dispositions, however, the record shows a copy of a Form I-690 in the file, which has not been adjudicated.

On July 10, 2007, the director issued a decision denying the application on the ground that the applicant did not submit sufficient credible evidence to establish his continuous residence in the United States during the requisite period. The director noted that the applicant stated in a sworn statement on June 20, 1999, that he first entered the United States in 1987, and that this statement contradicted the applicant's prior statement that he had entered the United States in 1981.

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 that the applicant submitted in support of his claim to have entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status during the requisite period for LIFE legalization consists of a series of letters and

affidavits from individuals who claim to have employed, rented an apartment to or otherwise known the applicant in the United States during the 1980s.
The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Here, the submitted evidence is not probative and credible.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988, such as school or hospital records which is reasonable to expect from a child of 8 in 1981. The applicant submitted a letter from his father stating that the applicant did not register for school because he did not have the proper documentation. This explanation is not convincing because primary education is free in the United States and is mandatory for children of the applicant's age regardless of whether the child had the proper documentation. Nonetheless, the applicant could have submitted medical records, which is expected of a child the applicant's age to have.

The AAO notes that although the applicant claims that he entered the United States prior to 1982 and resided continuously in the country during the requisite period, other records in the file show otherwise. For example, on June 20, 1999, the applicant completed a sworn statement under oath as part of his expedited removal interview. The applicant stated that he had lived in the United States from 1987 to 1997, when he voluntarily left the United States pursuant to a voluntary departure order. On the Form I-687 (application for status as a temporary resident) dated September 15, 1990, the applicant's response to question # 35 – absences from the United States since entry – was "none." The applicant's statement on June 20, 1999 and the complete lack of primary evidence to establish when the applicant first entered the United States, strongly suggest that the applicant first entered the United States in 1987 as opposed to 1981. The applicant was notified of this contradiction in the NOID and was offered the opportunity to submit objective evidence to reconcile the contradiction, but failed to do so.

The contradictions in the date of the applicant's initial entry into the United States (1981 or 1987), and the applicant's inability to resolve them when given the opportunity, undermines the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. 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.*

The affidavit from [redacted] owner of Cuquitas Restaurant in Dallas, Texas, stating that the applicant was employed from December 1985 to May 1990, as a dishwasher/busboy, 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 letter did not indicate whether the information about the applicant was from company records and whether the record is available for review. The affidavit is not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during the periods indicated. In view of the substantive deficiencies 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.

As for the affidavits in the record from individuals who claim to have rented an apartment to, or otherwise known the applicant during the 1980s, they have minimalist or fill-in-the-blank formats with general information about the applicant. The affiants provided very little details about the applicant's life in the United States, such as where he worked, and the nature and extent of their interaction with the applicant 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. Affiant [redacted] stated that she rented an apartment to "family [redacted]" from July 1981 to December 1985, but did not provide any documentation to establish that she owned the apartment, and that she was residing in the country during the period indicated. Furthermore, neither the applicant nor [redacted] supplemented the affidavit with other documents such as a rental agreement, rental receipts, utility bills or other receipts to indicate that the applicant resided at the address during the period indicated. In view of these substantive shortcomings, the AAO finds that 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, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

The AAO notes that the applicant has been convicted of a series of criminal offenses in the State of Texas between 1997 and 2005, which appears to make the applicant inadmissible for LIFE Legalization under Section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1). However, the actual court records are not currently contained in the record and the applicant's criminal history will not be used as a basis for dismissing his appeal.

Based on the analysis of the evidence, the AAO finds that the applicant has failed to establish that he entered the United States before January 1, 1982, and resided continuously in an unlawful status in the country from before January 1, 1982 through May 4, 1988, as described at 1104(c)(2)(B)(i) 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.