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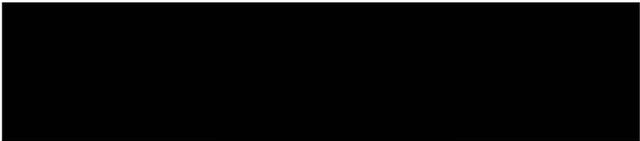
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

L2



FILE: [Redacted]  
MSC 01 331 61282

Office: SEATTLE

Date: **MAY 22 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:



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, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant submits a brief with attachments.

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 amenability to verification. 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 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 since 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. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *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 established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

The applicant filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on August 27, 2001. The director denied the application on September 1, 2004. The applicant filed a timely appeal from that decision on October 4, 2004.

The applicant, a national and citizen of Mexico, claims to have initially entered the United States without inspection in July 1981, and to have departed the United States on only one occasion – from May 8, 1987 to May 19, 1987 - in order to visit his parents in Mexico.

In an attempt to establish his continuous unlawful residence in the United States during the requisite time, the applicant has submitted the following documentation throughout the application process:

Regarding employment:

1. A letter from [REDACTED] of A & A Machine in Wilmington, California, stating that the applicant was employed as a janitor from July 1981 to January 1990 for which he was paid \$100 cash per week.

The employment letter from [REDACTED] is not dated or notarized. Furthermore, it does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) which 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.

Regarding residence:

2. A photocopy of a month-to-month rental agreement for a one-bedroom house at [REDACTED], South Gate, California, dated July 27, 1981.
3. A letter from [REDACTED], who identifies herself as an employee of Colonial Properties Real Estate, Management Division, stating the applicant had been a tenant from August 1981 to January 1990.

The rental agreement is a one-page generic document. Furthermore, in her letter, [REDACTED] does not specify where the applicant resided throughout his tenancy.

Other:

4. Similar fill-in-the-blank affidavits – all notarized on either October 29 or 30, 1993 - from [REDACTED] (who indicates she met the applicant at a party in January 1982), [REDACTED] (who indicates she met the applicant at a party in 1989, [REDACTED] (who indicates he met the applicant in September 1981 at his apartment complex where the applicant came to visit his girlfriend), [REDACTED] (who indicates he met the applicant in January 1982 – also at the apartment complex where he visited his girlfriend), a second [REDACTED] (who indicates he met the applicant through a friend in 1983), and [REDACTED] (who indicates he met the applicant at a party in September 1981. Each of the affiants list the applicant's residences in California as: [REDACTED] in Southgate from July 1981 to January 1990; 1786 [REDACTED] in Torrance from February 1990 to December 1990; and [REDACTED] in Cudahy from January 1991 to the date the affidavits were signed.

The documentation provided in No. 4 lacks details as to how the affiants first met the applicant, what their relationships with the applicant were, and how frequently and under what circumstances they saw the applicant throughout the requisite period. Of the six affiants, only two attest to meeting the applicant prior to January 1, 1982. Furthermore, the affidavit from [REDACTED] was signed by [REDACTED], and the affidavit from [REDACTED] was signed by [REDACTED] – which undermines the credibility of the attestations/notarizations.

In summary, the documentation provided by the applicant has little evidentiary weight or probative value.

It is also noted that there are some discrepancies in the record regarding the applicant's marital history and children. On a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), the applicant indicated he has only been

married once, that his wife's name was [REDACTED] and he had no children. However, on his Form I-485, the applicant indicated that he had three children: [REDACTED] (born in Mexico on November 4, 1983), [REDACTED] (born in Mexico on November 27, 1986), and [REDACTED] (born in the United States on December 3, 1993). And, on a Form G-325, Biographic Information, signed by the applicant on August 21, 2001, he indicated he had been married to [REDACTED] in 1979 in Mexico, the marriage was terminated in Mexico on an unspecified date and he had married [REDACTED] in California on an unspecified date. It appears as if the applicant's children born in Mexico in 1983 and 1986 (with the last names of [REDACTED] were from his relationship with his first wife, [REDACTED]. There is not documentation contained in the record indicating that the applicant's first wife ever resided in the United States. Either the applicant's first wife visited/resided in the United States for the conception of the children, or, the applicant departed the United States to conceive the children in or about February 1983 and February 1986 – however, he indicated on his Form I-687 that he had been absent from the United States on only one occasion (in May 1987) between January 1, 1982, and May 4, 1988.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

On appeal, counsel asserts that the director committed procedural errors in failing, under 8 C.F.R. § 103.2(b)(8) and 8 C.F.R. § 245a.20, to issue a Request for Evidence (RFE). Counsel's assertion is not persuasive. Neither 8 C.F.R. § 103.2(b)(8) or 8 C.F.R. § 245a.20 require the director to issue an RFE. The director did, however, issue a Notice of Intent to Deny (NOID) the application on October 23, 2003, in which he explained the insufficiencies in the applicant's submissions and provided the applicant an opportunity to respond.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black's Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Based on a review of the record, given the paucity of the documentation provided in support of the applicant's claim and the inconsistencies noted, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.