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

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[redacted]

FILE: [redacted] Offices: DALLAS Date: NOV 23 2009
MSC 03 239 62605

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.

Perry J. Rhew
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 Dallas, 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 is a class member in one of the legalization class action law suits.

On appeal, counsel asserts that the applicant filed for class membership under one of the legalization class action lawsuits and is a class member.

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).

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 April 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 27, 2003.

In a Notice of Intent to Deny (NOID) dated July 22, 2005, the director indicated that the applicant has not submitted sufficient credible evidence in support of his application. Additionally, the director indicated that the applicant did not submit documentation evidencing that he filed for class membership in one of the legalization class action lawsuits. The applicant was granted 30 days to submit additional evidence.

The applicant timely responded to the NOID. On November 24, 2007, the director issued a Notice of Decision denying the application on the grounds that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. While acknowledging that the applicant submitted additional documentation in support of his application, the director denied the applicant solely on the ground that the applicant failed to show that he is a class member.

On appeal, counsel asserts that the applicant filed for class membership under one of the legalization class action lawsuits and is a class member.

Under the CSS/Newman Settlement Agreements, if the director finds that an applicant is ineligible for class membership, the director must first issue a notice of intent to deny, which explains any perceived deficiency in the applicant's Class Member Application and provide the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. Once the applicant has had an opportunity to respond to any such notice, if the applicant has not overcome the director's finding then the director must issue a written decision to deny an application for class membership to both counsel and the applicant, with a copy to class counsel. The notice shall explain the reason for the denial of the application, and notify the applicant of his or her right to seek review of such denial by a Special Master. *See* CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

The record reflects that the applicant was issued an employment authorization under section 274A.12(C)(24) of the Immigration and Nationality Act (Act), and on the Form I-485 (Application to Register Permanent Residence or Adjust Status) the applicant filed on May 27, 2003, the director noted that the applicant is "in class." The AAO notes that the director adjudicated the Form I-687 the applicant filed on September 7, 2005, on the merits and presumptively found the applicant eligible for class membership under the Terms of the CSS/Newman Settlement Agreements, the director's decision to deny this current application (Form I-485) on the ground that the applicant did not establish that he is a class member of the CSS/Newman (LULAC) lawsuits will be withdrawn. The application will be adjudicated on its merit to determine whether the evidence in the record is sufficient to establish that the applicant

meets the continuous residence requirement from before January 1, 1982 through the date of filing the application.

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 here, the applicant has failed to meet his burden.

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of a series of affidavits from individuals who claim to have employed, resided with 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.

The AAO notes that the applicant, who claims to have traveled to the United States in 1981, was only 10 years old when he allegedly entered the United States. The applicant did not submit any credible documentation to establish such entry. 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 medical records which is reasonable to expect from a child of 10 years old residing in the United States in 1981. The applicant did not provide any reasonable explanation why he is unable to produce such documents. The applicant was 10 years old in 1981 and would have been cared for by an adult, but the applicant did not submit any credible documentation from an adult guardian or provide explanation as to how he was able to care for himself during his minor years including renting and paying for an apartment.

The affidavits in the record from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s, have minimalist or fill-in-the-blank formats. For the length of time they claim to have known the applicant, the affiants provided very few details about the applicant's life in the United States and the nature and extent of their interactions 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. The affiants did not indicate their source of information that the applicant entered the United States in 1981 and had been continuously residing in the country since then.

claims to have employed the applicant from 1988 to 1989, but did not provide any document to establish his own identity and residence in the United States during the period he claims to have employed the applicant. did not indicate the applicant's address during the period of employment, did not indicate whether his information about the applicant was based on company records, where the records are kept and whether the record is available for review. Neither nor the applicant supplemented the letter of employment with copies of earnings statements, pay stubs or tax records to show that the applicant was employed during the period indicated.

claims that she is the applicant's aunt and that applicant resided with her from April 1981 to September 1987 and again from an unidentified date until the date on the letter (October 1991). did not provide any document to establish her identity and residence in the United States during the periods in question, did not provide any documents such as copies of rental agreements or leases, rent receipts, or copies of utility bills to establish that she resided at the address indicated. Most importantly, the applicant did not claim that he resided with at the address. Rather, the applicant indicated on the Form I-687 he filed in September 2005, that he resided "on the relative's house, address unknown" in Madisonville, Texas.

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. *See 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.*

Thus, the letters and affidavits from witnesses attesting to the applicant's residence in the United States during the 1980s 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 the requisite period.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish by a preponderance of the evidence 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.