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**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC 02 236 63514

Office: NEW YORK

Date: **APR 06 2010**

IN RE:

Applicant:

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.

Perry 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserted that the applicant proved his case by preponderance of the evidence that he has resided in the United States for the requisite period. Counsel asserted that the director's decision is arbitrary and capricious constituting an abuse of discretion. Counsel requested a copy of the Record of Proceedings (ROP) under the Freedom of Information Act (FOIA). Counsel stated that a brief or additional evidence would be submitted after receipt of the ROP. The record reflects that the request was completed on June 4, 2009.¹ A brief was received; therefore, the record will be considered complete. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.²

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 must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. The inference to be drawn from the documentation provided shall

¹ NRC2008018440.

² 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).

depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

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.* at 80. 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 or petitioner 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).

On May 24, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The relevant documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of two employment letters, attestations from four individuals claiming to know the applicant during the requisite period and a lease agreement. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The two employment declarations from [REDACTED] and [REDACTED] both state that the applicant was employed in the United States for a portion of the requisite period. The declarations do not conform to regulatory standards for letters from employers as stated in the

regulation at 8 C.F.R. § 245a.2(d)(3)(i). The declarations fail to provide the applicant's address at the time of employment, 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. Given the lack of relevant details, the declarations provide minimal probative value as evidence in support of the applicant's claim.

The attestations from [REDACTED] and [REDACTED] are general in nature and state that they have knowledge of the applicant's residence in the United States for all, or a portion, of the requisite period. These attestations fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the statements. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

It is also noted that [REDACTED] and [REDACTED] each provided two declarations in support of the applicant's claim. The declarants' statements are inconsistent. In his first declaration, [REDACTED] stated that the applicant painted his home in 1988; whereas in his second declaration, he stated that he met the applicant in 1983. In his first declaration [REDACTED] stated that he met the applicant in 1984; whereas in his second declaration, he stated that he met the applicant in 1985. The declarations presented provide contradictory information, and no explanation is provided for those contradictions. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. The declarations are not deemed credible and shall be afforded little weight.

In addition to the above submitted evidence, the record contains the applicant's own testimony in two of his affidavits and two Forms I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act). It is noted that there are several inconsistencies throughout the applicant's own testimonies and applications.

The record contains an affidavit signed by the applicant on December 24, 1990. In his affidavit, the applicant stated that he first entered the United States on March 21, 1981. The record also contains the applicant's Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS (LULAC). Here, the applicant stated that he first entered the United States in October 1981. The inconsistency between the applicant's own testimonies brings into question the credibility of his claim.

In addition, the record contains two Forms I-687 both signed by the applicant. In his first Form I-687, the applicant stated that he resided at [REDACTED] from 1981 to 1985 and at [REDACTED] from 1986 to February 1990. In his second Form I-687, the applicant stated completely different addresses during the requisite period.

In his first Form I-687, the applicant stated that he was self-employed throughout the requisite period, first at a car wash from 1981 to 1987 and then painting houses and at odd jobs from 1988 to the present. In his second Form I-687, the applicant stated that he was employed at [REDACTED] from 1981 to 1987 and at [REDACTED] from 1987 to 1990. Furthermore, in his first Form I-687, the applicant stated one absence from the United States in May 1982; whereas, in his second Form I-687, he stated only one absence in July 1987.

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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistency. The inconsistencies in the record, noted above, are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period.

It is noted that the record also contains an apartment lease in the applicant's name, dated March 1981 to February 1983. However, given the inconsistencies above, the AAO finds the lease agreement to hold little weight as credible evidence in support of the applicant's claim.

Based upon the foregoing, the documents submitted in support of the applicant's claim have been found to contain inconsistencies and to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

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