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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

[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: JUN 10 2010

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, San Francisco, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status known to the government for the duration of the requisite period. Specifically, the director found that the applicant submitted insufficient evidence of his entry to the United States prior to January 1, 1982 and of his continuous residence in the United States throughout the entire relevant period.

On appeal, the applicant asserts that United States Citizenship & Immigration Services (USCIS) erred in finding that the applicant failed to prove that he had continuously resided in the United States in a manner known to the government throughout the requisite period. He asserts that the director's decision is contrary to the terms of law and that the director applied the wrong standard. He also asserts that his initial entry to the United States in 1981 was lawful as he was inspected by immigration officials at the border. The applicant requests a copy of the record of proceedings. This request was processed on June 4, 2009 ([redacted]

Preliminarily, the AAO notes that the director adjudicated the application on the merits and presumptively found the applicant eligible for class membership under the terms of the CSS/Newman Settlement Agreements. On September 9, 2008 the court approved a Stipulation of Settlement in the class action *Northwest Immigrant Rights Project, et al vs. USCIS, et al,* 88-CV-00379 JLR (W.D. Was.) (NWIRP). Class members are defined, in relevant part, as:

> 1. Class Members [include] all persons who entered the United States in a nonimmigrant status prior to January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A of the INA [Immigration & Nationality Act], 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below in paragraph 2, and who
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> (A) between May 5, 1987 and May 4, 1988, attempted to file a complete application for legalization under § 245A of the INA and fees to an INS officer or agent acting on behalf of the INS, including a Qualified Designated Agency ("QDE"), and whose applications were rejected for filing (hereinafter referred to as 'Subclass A members'); or
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> (B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible for legalization, or were refused legalization application forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to file or complete a timely written application (hereinafter referred to as 'Sub-class B' members); or

(C) filed a legalization application under INA § 245A and fees with an INS officer or agent acting on behalf of the INS, including a QDE, and whose application

i. has not been finally adjudicated or whose temporary resident status has been proposed for termination (hereinafter referred to as 'Sub-class C.i. members'),

ii. was denied or whose temporary resident status was terminated, where the INS or CIS action or inaction was because INS or CIS believed the applicant had failed to meet the 'known to the government' requirement, or the requirement that s/he demonstrate that his/her unlawful residence was continuous (hereinafter referred to as 'Sub-class C.ii members').

2. Enumerated Categories

(1) Persons who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.

(2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer reports of status violations) are not contained in the alien's A-file, and who are unable to meet the requirements of 8 C.F.R. §§ 245a.1(d) and 245a.2(d) without such records.

(3) Persons whose facially valid 'lawful status' on or after January 1, 1982 was obtained by fraud or mistake, whether such 'lawful status' was the result of

(a) reinstatement to nonimmigrant status;
(b) change of nonimmigrant status pursuant to INA § 248;
(c) adjustment of status pursuant to INA § 245; or
(d) grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

The AAO finds that the applicant is not a member of the NWIRP class as enumerated above as he failed to establish he entered the United States in nonimmigrant status prior to January 1, 1982.

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).

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 states 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 petitioner 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 or petition.

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).

In support of his claim of continuous unlawful residence in the United States since before January 1, 1982, the applicant provides conflicting accounts of the manner of his entry to the United States.

For example, in an affidavit submitted in connection with the applicant's Form I-687, the applicant indicates that he drove through a checkpoint at the border station at San Ysidro, California and was waived through by immigration officials. On the Form I-687, the applicant indicates that his first entry was without inspection. In either case, the applicant has failed to prove that he entered the United States lawfully prior to January 1, 1982. Thus, the applicant has

not proven his lawful entry prior January 1, 1982 and he is therefore, not a NWIRP class member.

Furthermore, the applicant has failed to establish that he resided continuously in the United States from the time of his entry until his entry on March 27, 1983 in B1/B2 status. The applicant has submitted sufficient evidence of his residence in the United States following his March 1983 entry. This evidence includes school transcripts from Lincoln University, grade reports from Lincoln University, Form I-20's indicating student status, bank statements, utility bills, airline tickets, PG&E bills and envelopes.

However, the applicant has not submitted sufficient evidence of his entry to the United States or his unlawful continuous residence in the United States prior to March 1983. Specifically, the applicant submits the following evidence pertaining to this period:

- Affidavits from [redacted]. Both affiants indicate that they resided in Mexico throughout the relevant period and therefore, their statements do not contain direct personal knowledge of the applicant's residence.

- Affidavits from [redacted] All contain statements that the affiants have known the applicant for some time and that they attest to the applicant being physically present in the United States during the required period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. For example, several affiants indicate that the applicant lived in Petaluma until 1983 when he moved to San Francisco, however, none of the affiants indicate how frequently they saw him or how they date their initial acquaintance with the applicant.

- An affidavit from [redacted] who indicates that he leased an apartment to the applicant from May 1981 until July 1981. This is prior to the relevant period and does not establish continuous residency.

- A letter from [redacted] indicating that the applicant has been a customer since 1981. However, the letter also notes that the applicant's first account was opened in 1983. It is unclear what the relationship was between the bank and the applicant prior to his account opening in 1983.

- The applicant has also submitted several envelopes which contain his name and address. However, most of these envelopes contain illegible date stamps and are therefore, not probative.

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 were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. 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.

Thus, the AAO agrees with the director that the applicant has not established his continuous residence in the United States during the entire relevant period.

Beyond the decision of the director, Section 1104(c)(2)(D)(i) of the LIFE Act requires an alien to establish that he or she is admissible to the United States as an immigrant in order to be eligible for adjustment to permanent resident status under the LIFE Act. It is noted that if the applicant misrepresented his prior status or his immigrant intent in an effort to obtain a non-immigrant F-1 student visa, he is inadmissible. Section 212(a)(6)(C) of the Act provides:

> Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Although the cited ground of inadmissibility may be waived in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, the applicant's Form I-690 Application for Waiver of Grounds of Excludability has not been approved; therefore, the applicant is ineligible for LIFE Act benefits for this additional reason

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