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

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: BALTIMORE Date: SEP 03 2010
MSC-01-306-60308

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 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, Baltimore on May 7, 2007 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act. The director found 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 for the duration of the requisite period. Specifically, the director noted that the applicant submitted sufficient evidence of his residence in the United States from October 16, 1983 through the end of the relevant period, however, he failed to establish entry prior to January 1, 1982 or his residence in the United States from the date of entry until October 1983.

On appeal, the applicant reiterated his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. He asserts that the director erroneously applied the standards of law and seeks to reverse precedent decisions.

The AAO has reviewed the entire record of proceedings and agrees with the director that the applicant has established his continuous residence in the United States from October 16, 1983 through the end of the relevant period. The evidence contained in the filed which supports the applicant's continuous residence in the United States for this period consists of W-2's, a marriage certificate, children's birth certificates, original lease agreements, tax return documents, checking and savings deposit slips and pay-check stubs. However, the AAO also agrees with the director that the applicant has failed to provide sufficient evidence of his residence prior to October 1983.

On May 11, 2010, the AAO issued a Notice of Intent to Deny (NOID) providing the applicant one additional opportunity to submit evidence of his residence in the United States from prior to January 1, 1982 until October 16, 1983. Counsel for the applicant requested additional time to submit evidence. This extension was granted. However, the applicant has not submitted any additional explanation or evidence in response to the NOID. Therefore, the appeal will be dismissed.

An applicant for permanent resident status 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 and through May 4, 1988. Section 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 under the provisions of section 212(a) of the Act, 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).

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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) 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.

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 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.

The issue in this proceeding is whether the applicant established that he (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 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 several affidavits and envelopes. 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 AAO also notes that the applicant filed a Form I-687 Application for Temporary Resident Status on April 25, 2005. This application was denied on May 7, 2007. In the Notice of Denial, the director indicated that the applicant had established his unlawful residence in the United States beginning October 1983. However, the director also indicated that the applicant had not provided sufficient evidence of either his entry to the United

States prior to January 1, 1982 or his residence in the United States from the date of his entry until October 1983.

The AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). 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 AAO notes that the applicant has not established, by a preponderance of the evidence, that he entered the United States prior to January 1, 1982 and resided in the United States in an unlawful status from that time until October 1983 as noted by the director in the Notice of Denial of the Form I-687. The applicant has failed to meet his burden under the LIFE Act as well.

The documentation contained in the record which pertains to the relevant period consists of the following:

- An affidavit from [redacted] who indicates that he has known the applicant since January 1981 and that they shared an apartment at [redacted] from January 1981 until May 1984. The affiant does not provide any other information regarding his relationship with the applicant, or any additional evidence of their shared apartment such as rental lease, receipts, utility bills etc. Furthermore, the affiant does not list an address in the United States prior to 1986 on his Form I-687. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States until October 1983.

- A letter from [redacted] indicating that the applicant worked for the company from February 1981 until December 1982 as a mechanic helper. This letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by [redacted] does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

- The affiant [redacted] indicates that he has known the applicant since 1981 and that they were neighbors at [redacted]. He does not indicate the how frequently he had contact with the applicant, or how he had personal knowledge of the applicant's presence in the United States for the duration of the relevant period.

- Affiant [redacted] indicates that he met the applicant at a laundromat in 1981 and that he sees the applicant on a weekly basis.

- [redacted] provide nearly identical affidavits both indicating that they met the applicant in 1981 and that they are good friends who see each other on a weekly basis.

- Affidavits from [redacted] in which the affiants indicate that they visited the applicant in Houston beginning in October 1981

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.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few of the affiants provided much relevant information beyond acknowledging that they met during the relevant period. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value.

It is noted that the director indicated that the applicant was absent from the United States from January 6, 1988 until February 3, 1988. The director indicated that this absence represented a break in the applicant's continuous physical presence.

A LIFE legalization applicant must show continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* Section 1104(c)(2)(B) of the LIFE Act. An absence during this period which is found to be brief, casual and innocent in accordance with the guidelines set forth in *Rosenburg v. Fleuti*, 374 U.S. 449 (1963) shall not break a legalization or

LIFE legalization applicant's continuous physical presence. *See e.g. Espinoza-Gutierrez v. Smith, INS, et al.*, 94 F.3d 1270 (9th Cir. 1996). The *Espinoza-Gutierrez* court held that a legalization applicant's absence would not represent a break in continuous physical presence if it was found that the absence was brief, casual and innocent as defined by the Court in *Fleuti*. *See also Assa'ad v. U.S. Attorney General, INS*, 332 F.3d 1321 (11th Cir. 2003)(which affirmed the portion of the holding in *Espinoza-Gutierrez* relied upon here, but disagreed with a different aspect of that holding.) Applying the *Fleuti* doctrine to the facts in this matter, the AAO finds that the applicant's absence of less than 30 days was brief, casual and innocent in that the record indicates: that the applicant was absent from the United States in order to be with his ailing mother for less than thirty days. *See Rosenberg v. Fleuti*, 374 U.S. 449 (1963)(where the Court looked to (1) the duration of the alien's absence; (2) the purpose of the absence; and (3) the need for special documentation to make the trip abroad to determine whether the absence was a brief, innocent and casual absence or whether it was a meaningful disruption of the alien's residence in the United States.) *But see In Re Jesus Collado-Munoz* 21 I&N Dec. 1061 (BIA 1997)(where the BIA states that certain provisions in the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* expressly preserve some but not all of the *Fleuti* doctrine in the context of exits and re-entries of lawful permanent residents.) Accordingly, that portion of the director's decision will be withdrawn.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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