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FILE: 

Office: LOS ANGELES

Date: FEB 05 2007

MSC 02 162 64842

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action and consideration.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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. 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 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).

In a Notice of Intent to Deny issued on November 4, 2004, the director advised the applicant that the affidavits submitted lacked probative value as they did not contain sufficient information and corroborative documents. The applicant was also advised of a discrepancy regarding a departure in 1987. Namely, the applicant, at the time of his LIFE interview, indicated that he did not depart to Mexico in 1987; however, the he claimed on his Form I-687 application and Class Membership Questionnaire to have departed the United

States to Mexico in May 1987. In addition, [REDACTED] in his affidavit, attested to the applicant's May 1987 departure to Mexico.

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

Regarding the applicant's departure in 1987, counsel, in response to the Notice of Intent to Deny, asserted, "even if [the applicant] had left in May 1987, it was a brief departure which did not break the continuance physical presence."

The AAO agrees with counsel's assessment as the departure in 1987 did not exceed the 45-day limit for a single absence. As such, the applicant has satisfactorily resolved any inconsistencies in his claim and documentation regarding his 1987 departure from the United States.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. Specifically, affidavits of residence from individuals, all whom provide their addresses and/or telephone numbers and indicated a willingness to testify in this matter; employment letters from his employers, most of whom indicated a willingness to testify in this matter; and envelopes postmarked to his Los Angeles, California address during the requisite period. The record contains no evidence to suggest that the director attempted to contact any of the employers to verify the authenticity of the employment documents submitted. The district director has not established that the information in these affidavits was inconsistent with the claims made on the application, or that such information was false. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Beyond the decision of the director, it is noted that the record contains court documentation for Case no. [REDACTED], which reveals two misdemeanor convictions for violating sections 23152(a) VC and 12500(a) VC, driving under the influence and driving without a license, respectively. The record also contains court documentation for [REDACTED], which reveals an arrest for violating section 14601.1(a) VC, driving while license is suspended or revoked. The court documentation for this offense was not submitted in its entirety and,

therefore, the final outcome for this offense is unknown. The interviewing officer's notes reflect the applicant's criminal history, but the director did not address this issue in the Notice of Intent to Deny.

Accordingly, this matter will be remanded for the purpose of a new decision addressing the above. The director shall determine whether the applicant is statutorily ineligible on the basis of criminality. In the event the director issues any contrary decision to the applicant concerning either the grounds of ineligibility, this matter shall be certified to this office for review.

**ORDER:** This matter is remanded for further action and consideration pursuant to the above.