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U.S. Citizenship
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L2

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FILE: [REDACTED] Office: CHICAGO Date: JUN 12 2006
MSC 02 192 60201

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:

SELF-REPRESENTED

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

In his Notice of Decision, the director initially stated that during his adjustment of status interview, the applicant admitted to entering the United States pursuant to a valid B-2 nonimmigrant visitor's visa on or about 1982 with his father, and such entry terminated his unlawful status. The director concluded his decision by stating that the applicant alleged that he first entered the United States illegally in 1981, and that he later reentered pursuant to a valid F-1 student visa. The director determined that the applicant failed to submit sufficient evidence to establish that he continuously resided unlawfully in the United States since before January 1, 1982 through May 4, 1988.

On appeal, the applicant states that the decision to deny his application was based on incorrect information, and that the information regarding his alleged entry into the United States with his father is wrong. The applicant provides a letter from [REDACTED] support of his appeal, along with copies of previously submitted documentation.

The language in the director's decision regarding the applicant's entry into the United States in 1982 is unsupported by any evidence in the record, and clearly is in error. However, this error did not affect the director's ultimate analysis of the applicant's application, as evidenced by his discussion of the applicant's evidence that appears in bold type in the decision. We conclude, therefore, that the applicant was not prejudiced by the director's reference to information that is clearly inapplicable to the applicant, and we withdraw that portion of the director's decision.

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 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 Citizenship and Immigration Services (CIS) 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 applicant alleges that he entered the United States at the Canadian border in June 1981 without inspection. The applicant further stated that he left the United States in May 1985 and returned to the United States pursuant to an F-1 student visa to attend Indiana University. The applicant alleges that he violated his F-1 status by engaging in unauthorized work and by failing to attend school. The applicant alleges that his only other absence from the United States during the qualifying period was in November 1987, when he traveled to Canada.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

1. An April 14, 2003 sworn statement [REDACTED] in which she stated that she has known the applicant since the summer of 1981, when he was looking for yard work in her neighborhood. [REDACTED] stated that the applicant helped her around the house and eventually became a family friend.
2. A copy of an October 27, 2003 notarized letter from [REDACTED] who stated that he met the applicant in 1981 when he interviewed the applicant as a tutor for his daughter.
3. A copy of an October 30, 2003 notarized letter from [REDACTED] who stated that she was introduced to the applicant in the fall of 1981, when she hired him as a handyman for her home in Michigan City, Indiana.
4. A passport with a U.S. immigration stamp reflecting entry into the United States on June 20, 1985 pursuant to an approved F-1 visa dated June 6, 1985. The passport reflects that it was issued in Denmark on January 1, 1985.
5. School transcripts reflecting that the applicant attended the American Islamic College in Chicago beginning in the fall of 1985 through the fall semester 1987. The transcript reflects that the applicant withdrew from two of his three classes in the fall of 1986, and took one course in the spring and fall of 1987.
6. College transcripts reflecting that the applicant attended [REDACTED] in Chicago beginning in the fall of 1986 through the fall semester 1988. The transcripts reflect that the applicant withdrew from all of his courses during the spring semester of 1987, and attempted and failed one course during the spring semester of 1988.
7. A transcript from Indiana University, which reflects that the applicant was enrolled during the summer of 1985; however, the transcript does not reflect that the applicant registered for or completed any classes at this institution.
8. Envelopes addressed to the applicant in the United States with canceled postmarks in 1987.

9. On appeal, the applicant submits a copy of a February 26, 2004 letter from the registrar [REDACTED] [REDACTED] indicating that the applicant was enrolled at the school from the fall of 1986 through the fall of 1988. The registrar indicated that the applicant was "enrolled as a regular in district student. [He] made no declaration that he was an 'F-1 Visa Status' nor was he enrolled as such."

The record contains a copy of the applicant's passport from Bangladesh, indicating that it was issued on June 26, 1982. This date is inconsistent with the applicant's claim and those of the affiants that indicate he was present and living in the United States prior to 1982, and the applicant's claim that his only absences from the United States during the qualifying time frame was in 1985 and 1987. The record contains no evidence to resolve these dates. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant entered the United States legally in 1985 and attended classes in various institutions. The transcripts reflect that the applicant was simultaneously enrolled in two educational institutions during 1986 and 1987. While the transcript from the American Islamic College indicates that the applicant withdrew from most of his classes during the fall of 1986, the record reflects that he attended full time at Harry S. Truman College during the same time frame. The applicant submitted no evidence to establish that he violated the terms of his F-1 visa by engaging in unauthorized work during the required period. The evidence therefore does not establish that the beneficiary resided continuously in an unlawful status during the entire period from prior to January 1, 1982 to May 4, 1988.

Given the unresolved inconsistencies in the record and the applicant's attendance at school pursuant to a valid F-1 visa, it is concluded that he has failed to establish continuous residence in the U.S. for the required period.

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