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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
- MSC 01 311 60274

Office: NEW YORK

Date: NOV 03 2008

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 the matter 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.

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

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. The director noted that the evidence of residency submitted by the applicant consisted only of envelopes not bearing U.S. postmarks, a statement of treatment from a New York hospital dated February 19, 1985 and a boarding pass for a flight from New York to Chicago. The director questioned the credibility of these documents. The director also found that the applicant's testimony that he was 12-years-old when he entered the United States contradicted with other evidence indicating that he actually was 13-years-old at the time of entry. The director also noted that the applicant's absence from the United States from October 1987 to December 1987 was longer than 30 days, and concluded that it was not a brief, casual and innocent absence.

On appeal, counsel contends that, contrary to the director's assertions, the evidence of residency is credible. Counsel asserts that applicant testified that he was "about" 12 at the time of entry, and that such a discrepancy is insignificant. Counsel further contends that the applicant is unable to supply more evidence of residency because he was a minor at entry, a status that continued during the required period of residency. Finally, counsel asserts that the applicant was absent from the United States in 1987 for less than 45 days, a period that was "brief, casual and innocent" by law.

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 alien shall be regarded as having resided continuously in the United States if 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. 8 C.F.R. § 245a.15(c)(1).

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.

Here, the submitted evidence is not relevant, probative, and credible.

Two of the envelopes submitted by the applicant, and postmarked in 1984 and 1985 respectively, list an address in New York for the applicant, though the applicant’s residence during these years, as listed on the applicant’s Form I-687, was in Illinois. Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case the applicant has not resolved this inconsistency.

Even accepting that the applicant’s remaining evidence of residency is credible as counsel asserts, and that the age discrepancy discussed by the director is immaterial, the applicant has not submitted sufficient evidence to demonstrate he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The remaining evidence is probative as to the applicant’s presence on several dates during the required period, but is inadequate to show continuous residence over the entire period. Finally, the applicant indicated in his affidavit for classification under one of the requisite lawsuits that his period of absence from the United States in 1987 was from October 10, 1987 to December 15, 1987, a period of absence in excess of 45 days that breaks the continuity of the applicant’s residence pursuant to 8 C.F.R. § 245a.15(c)(1).

Due to the applicant’s failure to submit sufficient evidence of continuous residence from January 1, 1982 through May 4, 1988, coupled with the inconsistency between the evidence submitted by the applicant and the applicant’s Form I-687, the AAO finds that the applicant has not met his burden of proof in showing that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Accordingly, the applicant has not established eligibility to adjust status to Legal Permanent Resident status under section 1104 of the LIFE Act.

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