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U.S. Citizenship
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HL

APR 16 2007

FILE:

[REDACTED]

Office: HOUSTON

Date:

MSC 02 253 61480

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, Houston, 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 also denied the application because the applicant had not demonstrated that he was physically present in the United States from November 6, 1986 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 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).

The application must also be accompanied by evidence establishing an alien's continuous physical presence in the United States from November 6, 1986, through May 4, 1988. 8 C.F.R. § 245a.16(a). For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Brief, casual and innocent absences means temporary, occasional trips abroad as long as the purpose of the absence from the U.S. was consistent with the policies reflected in the immigration laws of the United States. 8 C.F.R. § 245a.16(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).

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

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:

- A letter dated December 2, 1989 and notarized on April 6, 1990 from [REDACTED] Manager of [REDACTED] in Houston, Texas, stating that the applicant was employed by the company from January 1987 to August 1987 and October 1987 to November 1988, taking two months vacation "to go to Pakistan."
- An affidavit notarized on January 10, 1990 from [REDACTED] stating that he met the applicant in 1981 when the applicant came to eat dinner at the restaurant where the [REDACTED] worked.
- A letter dated December 18, 1989 from [REDACTED] of U.S. Food Mart in Houston, Texas stating that the applicant was employed by the business from June 14, 1985 to October 1986.
- An affidavit notarized on December 14, 1989 from [REDACTED] stating that he met the applicant in 1981 and they used to play cricket together.
- An affidavit notarized on December 11, 1989 from [REDACTED] stating that the applicant resided with her at [REDACTED], in Houston, Texas from December 1986 to December 1988.
- A statement dated December 12, 1989 from [REDACTED] stating that he met the applicant in February 1982 and they are good friends.
- A statement dated December 10, 1989 from [REDACTED] stating that the applicant was his roommate at [REDACTED], in Houston, Texas from June 1985 to November 1986.

- An affidavit notarized on April 29, 1988 from [REDACTED] stating that he met the applicant in 1981 while working as a cashier at Link Valley Food Mart, where the applicant “used to come get milk and bread in the morning.”
- An affidavit notarized on March 31, 1988 from [REDACTED] the applicant’s cousin, stating that the applicant resided with him at [REDACTED] in Beaumont, Texas from December 1980 to December 1981 and at [REDACTED] from December 1981 to May 1985.

On December 3, 2004, the director issued a Notice of Intent to Deny (NOID) indicating that the application would be denied because “lack of evidence, along with contradictions between [the applicant’s] testimony given during [his] most recent interview and the testimony given in 1990” showed that the applicant did not enter the United States before January 1, 1982 and reside continuously in the United States in an unlawful status from that date through May 4, 1988. In particular, the director observed that the applicant testified in his interview on October 8, 2004 that he first entered the United States in 1980 with an “old lady” that he did not know, but indicated on his Legalization/Saw Examination Worksheet that he first entered the United States in 1981 with his aunt. Observing that the applicant did not have a social security card or evidence of school attendance, the director found that the applicant had failed to provide “tangible evidence” of residency other than affidavits from relatives or “adults who claimed to have befriended [the applicant] when” he was a child.

In addition, the director denied the application because the evidence showed that the applicant was not continuously physically present in the United States during the period beginning on November 6, 1986 and ending on May 4, 1988. The director observed that the applicant indicated on his Form I-687, Application for Status as a Temporary Resident, that he was absent from the United States from September 5, 1987 to October 13, 1987, and found that this absence was longer than the 30-day regulatory limit for absences. The director determined that the applicant had failed to show that his return could not be accomplished earlier because of an emergent reason. The director also noted that Jawed Momin indicated in his affidavit that the applicant was absent for two months.

In response to the NOID, counsel asserted that the applicant has consistently stated that he entered the United States in December 1980, and that he was told by his family that the woman he was traveling with was his aunt. Counsel also asserted that the applicant was not asked during his interview concerning any possible emergent reasons why he did not return to the United States earlier. Counsel explained that the applicant “was unable to return within 30 days and stayed extra 8 days in Pakistan to attend his grandfather’s funeral.” Counsel indicated that the applicant was “in the process of obtaining his grandfather’s death certificate.” Finally, counsel emphasized that the regulations allow the applicant to submit affidavits to prove continuous presence and residency, and urged the director to reconsider the decision. Counsel pointed out that the applicant’s ability to present evidence of residency is limited by the fact that the applicant was only a child when he entered the United States and did not attend school after his entry.

In the decision to deny the application dated January 14, 2005, the director acknowledged the applicant's response, but stated that the applicant's "credibility has not been established" and denied the application "based on the findings" in the NOID.

On appeal, counsel repeats the assertions made in her response to the NOID.

After reviewing all the evidence in the record, the AAO determines that the evidence of residency is not relevant, probative, and credible.

Contrary to the director's assertion in the NOID, the regulation at 8 C.F.R. § 245a.16(b) does not limit the meaning of a brief, casual, and innocent absence to an absence of 30 days or less. The evidence shows that the applicant's absence in 1987—an absence of approximately 38 days—did not exceed 45 days, and the applicant thus is not required to demonstrate that his return from this absence could not be accomplished earlier because of an emergent reason. The affidavit from [REDACTED] states that the applicant was on vacation from work for two months, but does not indicate that the applicant was absent from the United States for the entire two months. The AAO withdraws the director's finding that the applicant failed to demonstrate physical presence in the United States during the period beginning on November 6, 1986 and ending on May 4, 1988 solely because of his 38-day absence in 1987.

Although the regulations do allow the applicant to prove residency through affidavits, the applicant has failed to adequately reconcile the inconsistency concerning the date of his entry and his initial place of residency in the United States. Notes from an interview on April 12, 1990 contained on the applicant's Legalization/Saw Examination Worksheet indicate that the applicant stated in that interview that he entered the United States in 1981, rather than in December 1980 as indicated on the applicant's I-687 and in other testimony. Counsel asserts that the applicant has consistently claimed that he entered the United States in December 1980. It is noted, however, that in listing his residences on his Form I-687, the applicant indicated that he resided at [REDACTED] in Houston, Texas beginning in June 1980. [REDACTED] who permitted the applicant to stay at that address, asserts that the applicant has been present in the United States since 1980, but also states that the applicant only began residing with him in December 1981.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The applicant has submitted inconsistent evidence of residency. It is reasonable to expect him to explain why he has submitted contradictory information and adequately resolve the contradictions through credible evidence. It is reasonable to expect the applicant to submit explanations from affiants providing testimony that contradicts other evidence submitted by the applicant. The applicant has failed to present sufficient credible evidence to adequately address the discrepancies noted herein. The mere fact that many of the affidavits submitted by the applicant are from relatives does not necessarily diminish their

credibility and probative value. However, the discrepancies in the evidence submitted by the applicant raise questions regarding the authenticity of the remaining documents the applicant has presented in attempt to prove continuous residence in the United States prior to January 1, 1982 through May 4, 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the inconsistency in the evidence, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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