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U.S. Citizenship  
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Services

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FILE:

[REDACTED]

MSC 02 002 64159

Office: NEW YORK

Date:

OCT 19 2007

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

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

On appeal, the applicant asserts that he has "been in this great country for the last 23 years with [a] very clean record." The applicant submits additional documentation in support of the appeal.

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; 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 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).

In an undated affidavit that he submitted in support of a Form I-601, Application for Waiver of Ground of Excludability, the applicant stated that he first entered the United States in October 1981, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on January 10, 1990, the applicant stated that he left the United States once during the qualifying period, from September to October 1987, when he traveled to Jordan upon the death of his father. The applicant also stated that he lived at the following addresses in Brooklyn: 445

Columbia Street from October 1981 to September 1986, and 686 East 77 Street from September 1986 to November 1989.

The applicant further stated that he worked as a cashier at the following locations: Discount Food Mart in Brooklyn from January 1982 to November 1984, Project Food Company in Brooklyn from December 1984 to December 1986, and Store Twenty-Four Company in Greenwich, New York from January 1987 to September 1989. We note that the address for Project Food Company is the same as that of the address at which the applicant stated that he lived from October 1981 to September 1986. In the affidavit submitted with his Form I-601, Application for Waiver of Grounds of Excludability, however, the applicant stated that he worked as a "floor worker" at Super Market after he moved from his brother's home at [REDACTED] in Brooklyn.

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

1. An October 5, 1981 rent receipt in the name of the applicant and his brother. The receipt indicates that it was for payment of rent for apartment [REDACTED] in Brooklyn, and was for rent from [REDACTED]. In the affidavit, the applicant stated that he lived with his brother for the two first weeks after his arrival in the United States and that his brother supported him. Therefore, it seems unlikely that a receipt would be issued in both his name and that of his brother. Further, the applicant claimed to have first arrived in the United States in October 1981, which is subsequent to the beginning of the rental period for which the receipt was allegedly written.
2. A September 27, 2001 letter from [REDACTED] principal of the [REDACTED] in Brooklyn, New York, in which he stated that he had known the applicant since 1981, and that the applicant is a well-known volunteer with the school. [REDACTED] did not state the circumstances of his initial acquaintance with the applicant or how he dated his relationship with him. Further, [REDACTED] did not state that the applicant had resided in the United States throughout their acquaintance.
3. An August 17, 1984 letter from [REDACTED] in which he stated that he was the owner of Discount Food Market, and that the applicant had worked for the store from January 1982 until the date of the letter. [REDACTED] stated that the applicant worked as a "cashier, stock boy and deli man." [REDACTED] did not state whether the information about the applicant's employment was taken from company records or the applicant's address at the time of his employment, as required by 8 C.F.R. § 245a.2(d)(3)(i). The applicant submitted no documentary evidence, such as paycheck stubs, to corroborate his employment at the Discount Food Market.
4. A July 31, 2001 letter from [REDACTED], in which he stated that he had known the applicant since the "early 1980's." [REDACTED] did not state the circumstances of his initial acquaintance with the applicant or that the applicant resided in the United States during the required period.
5. An August 19, 2001 statement from [REDACTED], in which he stated that the applicant had been a patient of his dental practice "since the mid-80's."

6. A copy of a July 17, 2001 letter from Brooklyn College, signed by [REDACTED] Assistant Dean for Adult Degree and Continuing Education. [REDACTED] that the applicant requested proof from the school that he attended classes during the summer of 1986; however, the school did not maintain records that far back unless they were part of a certificate program.
7. An August 7, 2001 letter from The City University of New York signed by [REDACTED] Assistant Director and International Student Adviser of the International English Language Institute. [REDACTED] certified that the applicant had attended the school from August 13, 1986 to March 13, 1987.

The applicant submitted other documentation, including a Social Security Earnings Statement and copies of Forms W-2, Wage and Tax Statements. However, these documents are subsequent to the qualifying period and therefore are not probative of his presence and residence in the United States during the required period.

The record contains a copy of the applicant's Jordanian passport, indicating that he received a B-2, nonimmigrant visitor's visa from the American consulate in Amman on September 21, 1987, valid for multiple entries through September 20, 1992, and that he entered the United States pursuant to that visa on November 2, 1987. The director noted that the applicant stated during his interview on May 25, 2004, that he traveled to Jordan on September 11, 1987 when his father died, and returned on November 2, 1987 with a visitor's visa. On his Form I-687 application, the applicant stated that he was in Jordan from September to October 1987 when his father died. However, on July 1, 1992, the applicant applied for advance parole, stating that his father had died on June 28, 1992, and submitted a death certificate confirming the death.

In his affidavit accompanying the Form I-601 waiver application, the applicant stated that his father actually died in September 1987, and that he traveled to his funeral on or about September 13, 1987. The applicant stated that he wanted to visit his family in Jordan in 1992, and therefore lied about his father's death and made "a huge mistake by giving that reason supported by a death certificate." The record contains two death certificates for [REDACTED] the applicant's father, showing dates of death of June 29, 1992 and September 11, 1987.<sup>1</sup> It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. 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 visa application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The applicant submitted no competent objective evidence of his father's death in 1987. However, the record contains a copy of a June 28, 1992 doctor's statement verifying the death of [REDACTED] on June 28, 1992.

Assuming, however, that the applicant traveled to Jordan for his father's funeral on September 13, 1987, the latest day in 1987 that he alleged he traveled in 1987, his trip exceeded 45 days. The regulations at 8 C.F.R. § 245a.15(c)(1), defines "Continuous unlawful residence" as follows:

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<sup>1</sup> A third death certificate dated August 8, 1994 indicates that it was for an infant named Younis, whose father was [REDACTED]

*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.]

Although the term “emergent” is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.” In other words, the reason must be unexpected at the time of departure from the United States. The applicant stated that he traveled to Jordan after his father’s September 11 death and did not return to the United States until November 2. The applicant did not state why he could not have returned to the United States within the 45 days. Therefore, his 50-day absence from the United States would have interrupted his continuous residency in the United States.

Accordingly, given the unresolved inconsistencies in the record and the vagueness of several of the applicant’s supporting affidavits, such as those from [REDACTED] the applicant has failed to establish that he resided continuously in the United States for the required period.

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