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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

[REDACTED] consolidated]

MSC 02 101 60772

Office: NEW YORK

Date:

APR 17 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 District Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to establish that he been illegally and physically present in the United States from January 1, 1982, through May 4, 1998.

On appeal, counsel for the applicant asserts that the applicant initially entered the United States prior to January 1, 1982. Counsel asserts that the applicant visited his home country for less than 30 days in 1986. Counsel asserts that the documentation in the file establishes the applicant's continuous residence and physical presence in the United States since July 1986 to the present.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The record reflects that the applicant filed a Form I-589, Application for Asylum and Withholding of Deportation, with the New York Asylum Office, on March 14, 1991. The applicant subsequently filed a Form EOIR-42, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, with the Immigration Judge (IJ) in New York, on March 10, 1998. On his asylum application, the applicant indicated that he last arrived in the United States on April 24, 1986. On his cancellation application, the applicant indicated that he first arrived in the United States on April 24, 1986, as a visitor for business. The Asylum Office referred the asylum application to the IJ on September 11, 1997. The IJ denied the applications for asylum and cancellation of removal on October 8, 1999. The applicant appealed and the BIA dismissed the appeal on October 17, 2002.

On January 9, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On March 2, 2004, the applicant appeared for an interview based on his application.

On October 13, 2005, the director sent the applicant a Notice of Intent to Deny (NOID). The interviewing officer noted that the applicant stated during his interview that he entered the United States with a nonimmigrant B-2 visa in January 1980, left the United States, and returned in 1982. The interviewing officer noted that the applicant had previously established his first date of entry to the United States on his asylum application as April 29, 1986. The interviewing officer noted inconsistencies in the employment letters submitted by the applicant and found them not to be credible. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

On March 10, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel for the applicant asserts that the applicant initially entered the United States prior to January 1, 1982. Counsel asserts that the applicant visited his home country for less than

30 days in 1986. Counsel points out the documentation in the file that establishes the applicant's continuous residence and physical presence in the United States since July 1986 to the present.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period.

After a thorough review of the file, the AAO finds that the two letters from his employers, the various employment awards from his job at Burger King, and an Earnings Record from the Social Security Administration are sufficient to establish the applicant's continuous residence and continuous physical presence in the United States since April 24, 1986. The inconsistencies in the employer letters are minor and are corroborated by documentation in the form of awards and certificates issued to the applicant by the employer. Therefore, the director's decision to deny the application based on the inconsistencies in the Burger King and Greenburgh Health Center is withdrawn. The application cannot be approved, however, because the applicant has not established his continuous unlawful residence from before January 1, 1982, through May 4, 1988.

The only documentation in the record to support his assertion that he was here prior to April 1986 is not submitted with the current application, but is part of the record, as it was submitted in support of the applicant's Form I-687, Application for Temporary Residence:

Employment Letter

- The applicant submitted a letter from [REDACTED] owner of [REDACTED] i. Mr. [REDACTED] attested that the applicant worked there from March 1981 to April 1985. [REDACTED] stated that it was his understanding that the applicant left the deli to set up his own business.

Little if no evidentiary weight can be given to this affidavit. Specifically, the employer failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employer also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The employment letter lacks sufficient detail to be found probative. In addition, it appears to contradict information later submitted about the applicant's employment at Burger King.

Affidavits

- The applicant submitted three form affidavits, from [REDACTED] a clerk at the [REDACTED], located at [REDACTED] New York, New York; a clerk at the [REDACTED] located at [REDACTED], New York, New York; and,

[REDACTED], a clerk at the [REDACTED] located at [REDACTED] New York, New York.

[REDACTED] attests that the applicant resided at the [REDACTED] from January 1981 to September 1983. Mr. [REDACTED] states that the applicant roomed with a friend who shared the room rent, and that they paid promptly and lived quietly in the room. The clerk at the [REDACTED] states that the applicant resided there from October 1983 to August 1987. He states that the applicant roomed with a friend who shared the room rent, and that they paid promptly and lived quietly in the room. Mr. [REDACTED] attests that the applicant resided at the [REDACTED] from September 1987 to August 1990. [REDACTED] states that the applicant roomed with a friend who shared the room rent, and that they paid promptly and lived quietly in the room.

These affidavits can be given little evidentiary weight. Specifically, [REDACTED] and the clerk at the Aberdeen failed to state which business records their information was taken from, to identify the location of such records, and to state whether such records are accessible or, in the alternative state the reason why such records are unavailable. Furthermore, the letters lack sufficient detail to be found probative.

- The record of proceeding also contains a letter from [REDACTED], a typewriter repairman, who attested that he met the applicant in a place where an African market was held at 125th street between Lenox and 5th Avenue. Mr. [REDACTED] attested that he had personal knowledge of the applicant's residence in the United States from January 1981 through October 26, 1990.

This affidavit is of little probative value and can be given little evidentiary weight, as it does not provide sufficient detail of the affiant's personal knowledge of the applicant's continuous residence and continuous physical presence. For example, the affiant does not describe how he knows where the applicant was residing based on his relationship with the applicant, how he dated his acquaintance with the applicant, or how frequently he saw the applicant.

- The applicant submitted a letter from [REDACTED], from the Public Information section of the Malcolm Shabazz mosque in New York, New York. [REDACTED] stated that the applicant is a member of the Muslim Community and that he has been here since January of 1981. [REDACTED] stated the applicant attended Friday Jumah Prayer Services and other Prayer Services at the mosque. This letter can be given little evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, [REDACTED] does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the mosque.

Although the applicant has submitted numerous letters and affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant, or, how frequently they saw the applicant.

The remaining evidence in the record is comprised of the applicant's statements in which he claims to have first entered the United States in 1980 and then in 1982, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Furthermore, the date of the applicant's first date of entry into the United States listed on his asylum and cancellation of removal applications contradicts the information in the above-mentioned letters and affidavits. The applicant has not explained these inconsistencies.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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