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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 01 331 60954

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 (AAO) 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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

The applicant timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Office, in which he states that he has been living in the United States since 1981. The applicant submits copies of previously submitted documentation in support of the appeal. The applicant also indicated on the Form I-290B that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than two years after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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).

On a form to determine class membership, which he signed under penalty of perjury on May 29, 1990, the applicant stated that he first entered the United States in November 1981, when he crossed the border

without inspection. On his Form I-687, Application for Status as a Temporary Resident, the applicant stated that he lived at [REDACTED] in New York from November 1981 to January 1988, and at [REDACTED] Bronx, New York, thereafter. He also stated that he worked as a self-employed street vendor throughout the qualifying period.

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

1. A May 24, 1990, affidavit from [REDACTED] in which she stated that she met the applicant in 1981 at her girlfriend's "Corning Ware party." Mrs. [REDACTED] also stated in a notarized letter of the same date that she and the applicant rode the train together.
2. A May 19, 1990, notarized letter and a May 24, 1990, affidavit from [REDACTED] in which he verified that he had known the applicant since 1981, and that they first met while riding the train downtown to Manhattan.
3. A May 15, 1990, letter from the [REDACTED] verifying that the applicant lived at the hotel, located at [REDACTED] in New York, from November 1981 to January 1988. The manager purportedly signed the letter; however, the signature is illegible and the letter contains no other identifying information for the manager. The applicant submitted no documentation, such as rent receipts, lease agreement, or similar documentation to verify his residence at the hotel during the stated time frame.
4. A May 21, 1990, letter from the [REDACTED], signed by [REDACTED] of "public information." The letter indicated that the applicant "is a Member of the Muslim Community and he has been here since NOVEMBER 1981." The letter does not indicate the source of the information contained in the letter and does not indicate the applicant's address at the time of his membership and attendance at Masjid Malcolm Shabazz, as required by 8 C.F.R. § 245a.2(d)(3)(v).
5. A May 17, 1990, notarized statement from [REDACTED] manager of [REDACTED], in which he verified that the applicant had been a regular customer at the store since 1981. Mr. [REDACTED] did not indicate how he dated the applicant's patronage at the store.
6. A June 20, 1990, notarized statement from [REDACTED] in which he verified that the applicant resided with him at [REDACTED] in Bronx, New York beginning in January 1988. Mr. [REDACTED] stated that the applicant shared the rent and utilities with him. The applicant submitted no documentation, such as a lease agreement or utility bills, to corroborate that either he or [REDACTED] resided at the stated address during the period indicated. Mr. [REDACTED] also stated in a July 18, 1990, notarized statement, that he drove the applicant to the airport on December 8, 1987. Mr. [REDACTED] did not identify either the airport or the purpose of the applicant's trip there.
7. An August 20, 2001, affidavit from [REDACTED] in which he stated that he met the applicant on December 10, 1981, "on the occasion of a former [colleague's] birth day party."
8. An August 20, 2001, affidavit from [REDACTED] in which she stated that she met the applicant on a subway platform in New York City in November 1981.

On August 14, 2004, the director issued a Notice of Intent to Deny (NOID) in which she questioned the affidavits submitted in support of the application. According to the NOID, the applicant denied knowing [REDACTED] and [REDACTED]. The NOID further indicated that the applicant stated that he first arrived in the United States in 1991. However, the record does not contain interviewer's notes or other documentation to support the statements in the NOID. Nonetheless, the applicant has not clarified his knowledge of [REDACTED] or [REDACTED] and has not otherwise addressed the deficiencies in the evidence outlined in the NOID. In response to the NOID, the applicant submitted the following additional documentation:

9. A copy of a September 9, 2004, affidavit and accompanying letter from [REDACTED] in which he stated that he had met the applicant in December 1981, while the applicant was selling Christmas items on 42<sup>nd</sup> Street in New York. He stated that he met the applicant again about 11 years later and employed him in one of his businesses.
10. A copy of a September 8, 2004, affidavit and a copy of a statement from [REDACTED] in which he stated that he met the applicant at a birthday party in November 1981.

The applicant also submitted a copy of a Social Security Statement. However, the statement does not show that earnings were reported for the applicant prior to 1990.

In this instance, the applicant has submitted ten affidavits and third-party statements attesting to his continuous residence in the U.S. during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. However, while the statements submitted by the applicant do not directly contradict information that he provided, the applicant failed to respond to the director's NOID in which she questioned his knowledge of two of his affiants.

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 contemporaneous documentation that establishes his presence and residence in the United States during the qualifying period. The applicant has failed to submit any objective evidence to explain or justify his alleged lack of knowledge of at least two of his supporting affiants. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish by a preponderance of the evidence that he continuously resided in the United States from prior to January 1, 1982, to May 4, 1988.

Accordingly, the applicant 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.