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

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date:

FEB 08 2008

MSC 01 356 62395

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 National Benefits Center. 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 (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant submits a brief statement.

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 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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

Here, the submitted evidence is not sufficiently 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 notarized affidavit from [REDACTED] dated March 30, 1993, stating that the applicant had been employed by him as a maintenance man earning \$100.00 per week since July 1981.
- A notarized affidavit from [REDACTED] dated August 3, 1992, stating that the applicant had worked for him as a maintenance man since July 1981.
- A notarized affidavit from [REDACTED] dated April 20, 1993, stating that he drove the applicant from Miami to New York on July 20, 1981, from New York to Miami on May 30, 1987, and from Miami to New York on June 15, 1987.
- A notarized affidavit from [REDACTED], dated April 29, 1993, stating that he made arrangements for the applicant to travel by boat from Miami to Haiti on June 1, 1987, and from Haiti to Miami on June 25, 1987, at a cost of \$600.00.
- A notarized affidavit from the applicant, dated May 3, 1993, stating that he entered the United States on July 20, 1981, returned to Haiti on June 1, 1987, and re-entered the United States on June 25, 1987. He indicates that his travel was by boat and his entries into the United States were without inspection.

- A photocopy of certificate attesting to the applicant's birth in Haiti, with English translation, issued in Port-au-Prince, Haiti, on October 7, 1983.
- A photocopy of the biographic page from his Haitian passport, issued in New York on February 10, 1993.
- A New York Con Edison utility bill addressed to the applicant, dated February 3, 1993.

In a Notice of Intent to Deny (NOID), dated January 31, 2005, the district director noted that at an interview conducted on April 8, 2004, the applicant signed a sworn statement confirming that the first and only time he had ever entered the United States was on August 5, 1987 by boat from Haiti. The district director stated that the documentation submitted by the applicant to demonstrate his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988, "must be spurious, given the sworn statement that [the applicant] signed." The director concluded that the applicant was ineligible for Adjustment of Status under the LIFE Act, as he had not entered the United States prior to January 1, 1982, and was incapable of meeting either the necessary residency or continuous physical presence requirements. The district director granted the applicant 30 days to submit additional evidence. The record reveals that the applicant failed to respond to the NOID

In a decision to deny the application dated April 12, 2005, the district director indicated that the applicant had failed to submit any additional information to establish his eligibility and denied the application on the grounds stated in the NOID.

On appeal, the applicant submits a brief statement in which he maintains that his words were misunderstood, or his understanding of the paper he signed was wrong. He claims that he entered the United States in 1981, traveled to Haiti in June 1987, and last re-entered the United States on August 5, 1987. The applicant submits no new probative evidence in support of his appeal.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

The applicant has submitted affidavits from only himself and [REDACTED] attesting to his alleged entry into the United States in 1981, and subsequent departure and re-entry. It is further noted that in 1993, the applicant and [REDACTED] stated that the applicant's last entry into the United States was on June 15, 1987; however, the applicant states on appeal that his last entry into the United States was on August 5, 1987.

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 failed to submit credible

evidence that resolves the inconsistencies noted herein, or that is otherwise sufficient to meet his burden of proof.

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 insufficiency and discrepancies 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.