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[REDACTED]

FILE: [REDACTED]  
MSC 02 248 63078

Office: LOS ANGELES

Date: **JUL 01 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 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.

  
for 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, Los Angeles, California, 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, counsel for the applicant states that the director erred in denying the application because the director failed to give adequate weight to the evidence submitted. Counsel further asserts that the applicant submitted substantial sufficient credible evidence to establish eligibility.

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).

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.

In the Notice of Intent to Deny (NOID), dated January 24, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence and his physical presence in the United States during the requisite period. The director noted that the applicant testified that he had departed the United States for Mexico in 1986 and resided there for five or six months. The director, therefore, determined that the applicant had an absence from the United States that exceeded forty-five (45) days. The director granted the applicant thirty (30) days to submit additional evidence.

In response to the NOID, counsel stated that the applicant's departure towards the end of 1986 was for emergent reasons "to care for his father who was gravely ill." Counsel stated further that the applicant had submitted sufficient evidence to establish the requisite continuous residence. In the Notice of Decision, dated March 3, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant failed to submit sufficient evidence to establish his continuous residence.

On appeal, counsel for the applicant states that the applicant has met his burden of proof as he has submitted sufficient evidence to establish eligibility. Counsel references evidence previously submitted consisting of a letter from [REDACTED], and a notarized letter from [REDACTED].

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. The applicant submitted letters, including letters of employment as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

The record reflects that in support of the application the following letters which pertain to the requisite period were submitted:

- 1) A notarized letter from [REDACTED] stating that the applicant worked for him during 1981 – 1984, and 1987 – 1988;
- 2) A letter from [REDACTED], President, All Diameter Grinding, Inc., dated July 27, 1990, stating that the applicant was employed from November 21, 1985 to October 3, 1986; and,

- 3) A letter from [REDACTED], stating that he shared an apartment with the applicant during 1981 and 1982.

The letters of employment from [REDACTED] and [REDACTED] failed to provide information on the applicant's address at the time of employment, and do not show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). Also, neither Mr. [REDACTED], nor [REDACTED] indicated whether the applicant resided continuously in the United States throughout the requisite period.

[REDACTED] states in his letter that he shared an apartment with the applicant during 1981 and 1982. However, [REDACTED] does not indicate whether he had continued contact with the applicant in the United States after that time, or whether the applicant resided continuously in the United States since that time.

Although the applicant has submitted three letters in support of his application, the applicant has not provided reliable evidence of his residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

The applicant submitted additional documents, including a letter from [REDACTED], of Kemp Coke, Inc., dated August 3, 1990, stating that since June 1, 1988 the applicant lived at [REDACTED] Anaheim, California, and unsigned letters dated October 19, 1990 from [REDACTED] and from an unnamed individual. These letters, however, are not probative. The letter from [REDACTED] does not pertain to the requisite period, and the unsigned letters cannot be verified.

The applicant claims that he has resided in the United States since October 1981. However, the applicant has not provided any reliable contemporaneous evidence in support of his claim. It is reasonable to expect that the applicant would be able to provide some reliable contemporaneous documentation if he has been in the United States since 1981 as he claims. Given the applicant's reliance upon questionable letters and affidavits with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

In addition, the applicant has not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as the applicant had exceeded the

forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

The regulation at 8 C.F.R. § 245a.15(c)(1) provides that 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.

The director determined that the applicant had exceeded the 45 forty-five (45) day limit for a single absence from the United States. The applicant has failed to establish that the prolonged absence was for an emergent reason. Counsel states that the applicant's departure from the United States in 1986 was for emergent reasons to care for his sick father and provide economic support for his family. Counsel, however, does not provide any documentation, such as medical records, in support of his assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.