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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC 03 245 65626

Office: NEW YORK

Date: **MAR 10 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.

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, counsel for the applicant submits a brief statement and additional documentation.

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).

Nevertheless, an affidavit not meeting all the foregoing requirements may still merit consideration as "any other relevant document" pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include the following:

- (A) Alien's address at the time of employment;
- (B) Exact period of employment;
- (C) Periods of layoff;
- (D) Duties with the company;
- (E) Whether or not the information was taken from official company records; and
- (F) Where records are located and whether the Service may have access to the records.

The regulation further allows that if official company records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and explaining why such records are unavailable may be submitted in lieu of meeting the requirements at (E) and (F) above.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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:

- An un-notarized hand-written letter, dated April 9, 1991, from [REDACTED] stating that he drove the applicant by car from the United States (through the Buffalo, New

York Port of Entry) to Canada on June 6, 1987, and that they were allowed to drive through without inspection. The letter is not notarized, and does not provide the dates of the applicant's continuous residence to which the affiant can personally attest, the address(es) where the applicant resided throughout the period which the affiant has known the applicant, the basis for the affiant's acquaintance with the applicant, or the telephone number at which the affiant may be contacted.

A fill-in-the-blank affidavit, dated April 11, 1991, from [REDACTED] Alexandria, Virginia, stating that the applicant is his friend and that he has personal knowledge that the applicant has resided in the United States in Alexandria, Virginia, since May 1981, with one month being the longest period in which he (the affiant) has not seen the applicant. The affidavit does not provide a telephone number at which the affiant may be contacted.

- A letter from [REDACTED], identified as the Office Manager for [REDACTED] Washington, D.C., stating that the applicant was employed as a porter earning an annual salary of \$9,000 from October 11, 1981, to March 12, 1987. The letter is not notarized, does not provide the applicant's address at the time of employment, the periods of layoff (if any) whether or not the information was taken from official company records, or where records are located and whether the Service may have access to the records.

A letter, dated November 29, 2002, from [REDACTED], Vice-President of [REDACTED], Bronx, New York, stating that the applicant has been an active member of the organization since June 1985 and is currently an Executive Officer of the Association.

In a Notice of Intent to Deny (NOID), dated March 11, 2005, the district director noted that at an interview conducted on February 3, 2005, the applicant signed a sworn statement confirming that he had entered the United States for the first time in July 1982 - without inspection from Canada. 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 district 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. In response, the applicant submitted documentation dated on or after 1993. He also submitted a letter, dated April 6, 2005, stating that he "was confused on the day of [his] interview and wish [sic] to state that the date of [his] US entry was in May of 1981 and not July of 1982."

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.

In a decision to deny the application dated May 25, 2005, the district director indicated that the applicant had failed to submit sufficient evidence to establish his eligibility and denied the application on the grounds stated in the NOID.

On appeal, counsel for the applicant asserts that the district director failed to properly evaluate the probative documentation provided by the applicant.

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.

Although the applicant has submitted affidavits in support of his application, he has not provided sufficient contemporaneous evidence of 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. Although not required, none of the affidavits included any supporting documentation of the affiant's identity or presence in the United States. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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. Given the applicant's reliance upon documents 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 December 31, 1987.

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 insufficiencies 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.