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

PUBLIC COPY

[REDACTED]

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FILE:

MSC 02 211 63784

Office: NEW YORK

Date: **MAR 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 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 states that the director erred in not giving more weight to affidavits presented, because given that he was in unlawful status, he was not able to provide primary or secondary evidence to prove his residence and presence in the United States during the requisite periods.

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.

In the Notice of Intent to Deny (NOID), dated May 17, 2005, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted three affidavits in support of his claim; however, there is no proof that the affiants had direct personal knowledge of the events and circumstance of the applicant's unlawful status between January 1, 1982 and May 4, 1988. The director also noted that one of the affiants, [REDACTED] attests to knowing the applicant since 1985; another affiant, [REDACTED] attests to knowing the applicant since 1988; and, [REDACTED], the third affiant, attests to knowing the applicant since 1987. The director granted the applicant thirty (30) days to submit additional evidence.

The record reflects that the applicant's response to the NOID consisted of a letter from the applicant stating that from 1981 to 1990 he was living in the United States undocumented and, therefore he is unable to provide supporting documentation. **With his response to the NOID, the applicant submitted an affidavit from [REDACTED] also attesting to knowing the applicant since 1987.** No additional evidence was received. In the Notice of Decision, dated August 9, 2005, the director denied the instant application based on the reasons stated in the NOID.

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 a letter of employment and affidavits as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letter

The applicant submitted a letter of employment by [REDACTED], owner of Pelham Convenience Store, located at [REDACTED] Bronx, New York. [REDACTED] states in his February 25, 2004 letter that the applicant had been employed on a part-time basis selling newspapers from 1982 through 1984. It is noted, however, that the applicant he did not list the Pelham Convenience Store

as a previous employer on his Application for Status as a Temporary Resident, Form I-687, which he submitted on May 30, 1990. The applicant has failed to submit any objective evidence to explain or justify the discrepancy between his stated employment history and the employment letter. This casts doubts on whether the applicant was ever employed by the Pelham Convenience Store as he claims.

Furthermore, [REDACTED] failed to provide the applicant's address at the time of employment, 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). Mr. [REDACTED] also failed to specify the date or month in 1982 when the claimed employment commenced.

Affidavits

The applicant submitted a sworn form affidavit by [REDACTED], dated May 30, 1990, attesting to having known the applicant prior to 1981. However, the affiant does not state whether the applicant has been a continuous resident of the United States since that time.

The applicant also submitted sworn affidavits by [REDACTED], and [REDACTED]. As noted by the director, [REDACTED] attests to knowing the applicant since 1985; [REDACTED] attests to knowing the applicant since 1988; and, [REDACTED] attests to knowing the applicant since 1987. There is no indication that any of these affiants have known the applicant before January 1, 1982. Furthermore, they do not state whether the applicant has been a continuous resident of the United States since that time.

Although the applicant has submitted four affidavits in support of his application, the applicant has not provided any 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 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 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. 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 May 4, 1988.

It is noted that the record reflects that the applicant attempted entry into the United States on May 16, 1992, and was placed in exclusion proceedings, and on June 23, 1993, an Immigration Judge ordered the applicant excluded from the United States. In a Record of Sworn Statement in Affidavit Form, dated May 16, 1992, conducted in connection to placing the applicant in exclusion

proceedings, the applicant stated that he had first entered the United States as a tourist and returned to Pakistan to visit his mother in April 1992. When he was asked how long he had lived in the United States, he stated that it was about three years. This casts doubt on whether the applicant's claim that he first entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. 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 application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. 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 that he continuously resided in the United States in an unlawful status during the requisite period.

As noted above, the applicant attempted entry into the United States on May 16, 1992, and was placed in exclusion proceedings, and on June 23, 1993, an Immigration Judge ordered the applicant excluded from the United States.

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.