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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [redacted] Office: HOUSTON Date: **MAR 19 2008**
MSC 02 240 62471

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, Houston, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, counsel asserts that the director (i) failed to properly review all the evidence submitted by the Applicant, (ii) failed to verify the evidence submitted by the Applicant, (iii) failed to articulate a specific, cogent basis for the specific findings regarding the veracity of the evidence presented and whether such evidence was weighed against any contradictory evidence, and (iv) failed to follow precedent decisions, and departmental directives. Counsel submits a brief on appeal.

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.* at 80. 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, 431 (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 November 3, 2005, the director stated that the record reflected that the applicant entered the United States as a visitor on July 14, 1985. The director stated that the applicant did not reside in the United States in an unlawful status from January 1, 1982, through May 4, 1988. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence.

In response to the NOID, counsel does not dispute that the applicant entered the United States as a visitor on July 15, 1985. However, counsel asserted that the applicant's first entry into the United States was in 1981. Counsel asserted that the applicant testified to this fact during his interview and completed a Form I-690, Application for Waiver of Grounds of Excludability, for the misrepresentation in obtaining his 1985 U.S. visa. Counsel attached photocopies of the applicant's Form I-690 and Affidavit for Determination of Class Membership in *League of United Latin American Citizens v. INS (LUCLAC)*, which disclosed the 1985 entry as well.

In the Notice of Decision (NOD), dated December 22, 2005, the director determined that applicant failed to overcome the reasons for denial stated in the NOID. The director failed to address the applicant's alleged 1981 entry. Rather, the director cited to the applicant's affidavit and sworn testimony that he entered on a B-2 visa in 1985. The director determined that the applicant did not reside in the United States in an unlawful status during the requisite period. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

On appeal, counsel asserts that the director (i) failed to properly review all the evidence submitted by the Applicant, (ii) failed to verify the evidence submitted by the Applicant, (iii) failed to articulate a specific, cogent basis for the specific findings regarding the veracity of the evidence presented and whether such evidence was weighed against any contradictory evidence, and (iv) failed to follow precedent decisions, and departmental directives. Although the director appears to have relied solely on the NOID as the basis for the denial, we find the error harmless because we have conducted a *de novo* review. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers

which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In support of the applicant’s claim, the record contains the following relevant evidence:

1. A photocopy of the applicant’s Pakistan passport which contains a U.S. B-2 visa, issued on June 27, 1985. The passport also contains an admittance stamp to the United States dated in July 1985.
2. An Affidavit for Determination of Class Membership in *League of United Latin American Citizens v. INS* (LUCLAC), signed by the applicant on May 31, 1990. The applicant stated that he first entered the United States in August 1981. He stated that he departed the United States in June 1985 and returned on July 14, 1985 with a B-2 visa.
3. The applicant’s social security earnings record, which indicated that the applicant worked from 1986 through 2000.
4. A Form I-690, Application for Waiver of Grounds of Excludability, signed by the applicant on May 20, 1990. The applicant stated that he obtained a visa by willful misrepresentation in Lahore, Pakistan, on June 27, 1985. He stated that he was returning to his unrelinquished unlawful domicile.
5. A May 19, 1990, sworn affidavit by the owner of _____ (illegible signature), who stated that the applicant was employed by the company from November 1981 to April 1985 as a part-time painter, helper, and carpenter. The employer provided the company’s address and telephone number.
6. A May 16, 1990, notarized declaration by _____, who stated that he worked at Queens General Hospital and Mary Immaculate Hospital in New York. _____ stated that he has known the applicant from August 1981 to 1990. He provided his telephone number.
7. A May 15, 1990, notarized declaration by _____ who stated that she lived with the applicant from August 1981 through January 1983. _____ stated that they resided at _____ in Brooklyn, New York. She provided her current address of residence.

8. An undated, notarized declaration by [REDACTED] who stated that she has known the applicant for nine years, since August 1981. [REDACTED] stated that she is currently working as a home attendant. She provided her telephone number and address of residence.

The applicant must also prove that he entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States from January 1, 1982, through May 4, 1988. Based on the applicant's passport, affidavit and social security earnings report, it is evident that the applicant entered the United States in 1985 with a B-2 visa and continuously resided in an unlawful status in the United States for the remainder of the statutory period. In his affidavit, the applicant asserted that he violated his visitor status by returning to his illegal residence and employment in the United States. While the applicant entered in a lawful status on a B-2 visa, his social security earnings report indicated that he worked from 1986 through 1988. His employment terminated his lawful status and, therefore, he would have unlawful status.

It is not evident that the applicant entered before January 1, 1982, and continuously resided in an unlawful status through 1985. Counsel asserts that the applicant filed a Form I-690, which proves that the applicant resided in the United States prior to 1985. However, to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

The applicant provided a sworn affidavit by the owner of [REDACTED] (illegible signature). While the affiant identified the period of employment and the applicant's duties, the affiant failed to provide the applicant's address at the time of employment, 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 by the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The absence of sufficient detail detracts from the credibility of the affiant. Also, the absence of supporting documentation, such as pay stubs, detracts from the credibility of the applicant's claim.

The applicant also provided three declarations by [REDACTED] and [REDACTED]. All of the declarants stated that they have known the applicant since August 1981 and provided either an address or telephone number. The AAO does not find these letters to be credible. Although not required, none of the declarants included any supporting documentation of their identity or presence in the United States during the requisite period. None of the declarants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. The absence of detailed information detracts from the credibility of the declarants and provides minimal probative value.

The applicant has not provided any credible, contemporaneous evidence of his claimed entry into the United States before January 1, 1982. The applicant has failed to provide sufficient credible evidence of his claimed continuous unlawful residence in the United States from before January 1, 1982, through the entire 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 and supported information 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.12(e), 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.

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.