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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
MSC 02 080 61419

Office: NEW YORK

Date: MAY 23 2008

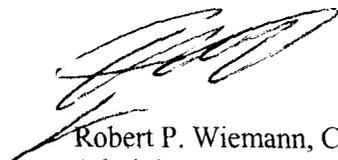
IN RE: Applicant: [REDACTED]

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


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 states 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 petitioner 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 petitioner 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 or petition.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v), signed attestations by churches, unions, or other organizations should identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the addresses where the applicant resided during the membership period; include the seal of the organization impressed on the letter, or the letterhead of the organization, if the organization has letterhead stationery; establish how the author know the applicant; and, establish the origin of the information being attested to.

While affidavits “may” be accepted (as “other relevant documentation”) [See 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of an applicant’s claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant’s unlawful continuous residence during the requisite time period.

The applicant filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on December 19, 2001.

The applicant, a native and citizen of Trinidad and Tobago, claims to have initially entered the United States as a nonimmigrant visitor in October 1980. He also claims to have departed the United States to visit family in Trinidad on two occasions (for three weeks in June/July 1984, and two weeks in February 1989) after which he returned to the United States as a nonimmigrant visitor.

In an attempt to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988, the applicant provided the following documentation in support of his Form I-485:

1. Two letters, dated January 4, 1991, and April 8, 2001, from [REDACTED], Chief Security Officer for the Supplemental Police Service (in Trinidad & Tobago), stating that the applicant was an Estate Constable in the Caroni (1975) Limited Police Service from July 9, 1981, until he resigned on April 14, 1980.
2. An “affidavit of witness,” dated October 14, 2001, from [REDACTED], a retired plumber living at [REDACTED] Brooklyn, New York, listing the applicant’s addresses in the United States as: Wyckoff, New Jersey from 1980 to 1983; Richmond Hill, New York, from 1983 to 1988; Miami, Florida, from 1988 to 1990; and, Richmond Hill, New York, from 1990 to present. Mr. [REDACTED] further stated that he has known the applicant from birth and that the applicant stayed with him upon arrival in New York for two months.
3. An “affidavit of witness,” dated October 15, 2001, from [REDACTED] M.D., of Richmond Hill, New York, listing the applicant’s addresses in the United States as: Wyckoff, New Jersey from 1980 to 1983; Richmond Hill, New York, from 1983 to

1988; Miami, Florida, from 1988 to 1990; and, Richmond Hill, New York, from 1990 to present. Dr. [REDACTED] stated that the applicant had been an acquaintance from 1980 to 1983, and also a patient from 1983 to present, except 1988 to 1990 when in Florida. A second affidavit, dated July 15, 2003, from [REDACTED] reiterates the information provided in the first affidavit.

4. A letter, dated July 16, 2003, from [REDACTED] stating that the applicant resided at [REDACTED] (no city/state provided) from 1980 to the present, and in Florida (no city provided) from 1988 to 1990. [REDACTED] again stated that the applicant had been his patient since 1983, except for the time period he was in Florida.
5. A letter, dated July 16, 2003, from [REDACTED] of Sudama Mandir, Inc., Richmond Hill, New York, stating that he had known the applicant since 1982, and that he was an active member of the temple except for the time he went to Florida from 1988 to 1990.

In a Notice of Intent to Deny (NOID), dated April 18, 2006, the district director noted numerous discrepancies in the applicant's testimony and documentation. Among other discrepancies, the director specifically noted that affidavits submitted by the applicant in support of his application were not credible or verifiable, and were possibly fraudulent. The district director also noted that the applicant was unable to provide any evidence of his initial entry or subsequent departures and reentry, because he claimed his passport, boarding passes, airline tickets, etc. had all been lost, and was unable to explain what had happened to them. The director granted the applicant 30 days to submit additional evidence. In response, the applicant provided a letter, dated May 18, 2006, stating that all of the questions asked of him were related to documents that are now over 25 years old, and that he had responded in a genuine manner. He also provided the following additional statements from acquaintances regarding his presence in the United States during the relevant time period:

6. A second letter, dated April 24, 2006, from I [REDACTED], M.D. (also see Nos. 3 and 4, above) stating that he has known the applicant for the past 26 years, and that the applicant has been a patient since 1983. He further stated that the applicant resided at [REDACTED] Jamaica, New York, from 1980 to 1988, moved to Florida, and then returned to the same address in Jamaica, New York - where he still resides - in 1990.
7. A letter, dated May 12, 2006, from [REDACTED], of South Ozone Park, New York, stating that he has known the applicant for an extensive period of time, and that their families have known each other since [REDACTED]'s arrival in the United States since 1983.

8. A second letter, dated May 13, 2006, from [REDACTED] (see No. 2, above), stating that he has known the applicant since 1951, and that he picked the applicant up at the airport in 1980 when he arrived in New York from Trinidad.

In a Notice of Decision (NOD), dated June 2, 2006, the district director denied the application based on the reasons stated in the NOID. The district director erroneously stated in the NOD that the applicant had failed to respond to the NOID (whereas - as noted above - he had, in fact, responded on May 18, 2006).

The applicant filed a timely appeal from the district director's decision on June 20, 2006. On appeal, the applicant asserts that the decision of the director is in error and must be reversed because there is enough evidence on file to show that he clearly qualifies for the relief he is seeking.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). Furthermore, the letter from Sudama Mandir, Inc., does not comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v).

The documentation provided by the applicant consists primarily of **third-party** affidavits ("other relevant documentation") from [REDACTED], and [REDACTED]. Mr. [REDACTED] indicates that he has known the applicant only since 1983. The letters and affidavits from [REDACTED] and [REDACTED] contain contradictory information – both indicated in 1991 that the applicant lived in Wyckoff, New Jersey, from 1980 to 1983, and Richmond Hill, New York, from 1983 to 1988. However, [REDACTED] indicated in 2006, that the applicant lived in Jamaica, New York, from 1980 to 1988. Furthermore, [REDACTED] has provided no objective evidence, i.e., medical records, verifying the applicant as his patient since 1983.

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).

Due to the insufficiencies and discrepancies in the documentation provided 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). 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.