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U.S. Citizenship
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Services

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[REDACTED]

FILE:

MSC 03 122 60063

Office: NEW YORK

Date:

NOV 03 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. 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 Director, New York, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the director's decision was in error as the applicant resided continuously in the United States since before January 1, 1982, through May 4, 1988. Counsel submit copies of documents that were previously provided along with additional evidence in support of the appeal.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

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.

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. Here, the applicant has failed to meet this burden.

The record contains a copy of the applicant's Ecuadorian passport which reveals: 1) on March 26, 1981, the applicant was issued a B-2 multiple entry nonimmigrant visa in Guayaquil, Ecuador, which expired on March 26, 1985; 2) the applicant lawfully entered the United States on April 8, 1981 and June 22, 1984; 3) a departure immigration stamp from Ecuador on April 8 1981, November 8, 1982, and June 22, 1984; and 4) an entry immigration stamp into Ecuador on April 30, 1981, December 18, 1982 and July 8, 1984.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- Notarized affidavits from [REDACTED] and [REDACTED] and [REDACTED] of New York, New York, who attested to the applicant's New York residences since February 1981. Mr. [REDACTED] indicated that he met the applicant at a reunion in 1981. Ms. [REDACTED] indicated that she met the applicant in 1981 when he came to the United States to live with his spouse. Mr. [REDACTED] indicated that he rented an apartment to the applicant and his family from February 1981 to August 1988 at [REDACTED] New York, New York.
- A letter from Reverend [REDACTED] of Ascension Rectory in New York, New York, who indicated that the applicant has been a faithful parishioner and belongs to the church.
- A notarized affidavit from [REDACTED] of Bronx, New York, who attested to the applicant's New York residence since February 1981. The affiant indicated that they met the applicant in a park in 1982 and they became friends.
- Notarized affidavits from [REDACTED] of Woodside, New York, who attested to the applicant's New York residence since February 1981. The affiant indicated that he has been a friend of the applicant for ten years and attested to the applicant's moral character.
- An employment affidavit from [REDACTED], store manager of To-U Enterprises, Corp, in New York, New York, who indicated that the applicant was employed from March 1981 to January 1985 as a jeweler.
- A Blue Cross Blue Shield identification card issued on September 24, 1985.
- A document dated September 10, 1985 from The Colonial Life Insurance Company of America. The document listed the applicant's employment at Almond Jewelers, Inc. from June 10, 1985.
- Form IT-200, Resident Income Tax Return, for 1986 and incomplete Form 1040, US Individual Income Tax Returns, for 1985 and 1986.
- Letters signed May 6, 1986 and March 4, 1998 along with an unsigned letter dated July 23, 1986 from the attorneys' office of [REDACTED] in Hicksville, New York.
- An identification card, a wage and tax statement for 1986 and earnings statements for the periods ending September 9, 16 and 30, 1987 from Almond Jewelers, Inc. in Westbury, New York.
- An airline ticket issued on April 8, 1981, from [REDACTED], Incorporated for travel from Ecuador to New York.
- A prescription dated December 14, 1987, issued by [REDACTED]s of New York, New York.
- Receipts dated March 7, 1987, July 7, 1987 and January 26, 1988, from J& B Express, Inc., in Woodside, New York.

- A receipt dated January 26, 1988 and a bank book reflecting several deposit and withdrawal entries from July 26, 1986 to April 30, 1988 from the New York branch of Banco Do Brasil S.A.
- Notarized affidavit from acquaintances, [REDACTED] and [REDACTED] of New York, who attested to the applicant's residence in the United States since the 1980's.

On March 7, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that he had not submitted sufficient evidence to establish continuous residence in the United States prior 1985 as the affidavits submitted appeared to be neither credible nor amenable to verification. No evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was also advised that an attempt to contact To-U Enterprises was made on March 7, 2005; however, no one answered the Service's inquiries. Therefore, a verification of the applicant's employment at this entity was not possible. The applicant, in response submitted:

- An affidavit from [REDACTED] who indicates that he is the brother-in-law of the applicant. The affiant attested to the applicant's entry into the United States in 1981.
- An additional affidavit from [REDACTED] who asserted that he has had a 25-year relationship with the applicant and his family starting in 1981. The affiant indicated that the applicant's spouse and his spouse worked together at Almond Jewelers in Westbury, New York in 1987.
- An additional affidavit from [REDACTED] who attested to the applicant's residence in the United States since 1981. The affiant asserted that from 1981 to 1984 he would occasionally see the applicant and his family at social functions.
- A notarized affidavit from a relative, [REDACTED], of New York, New York, who indicated that he has resided in the United States since 1980 and has known the applicant for many years when the applicant "came to this country at or around the same time I did."
- Notarized affidavits from [REDACTED] and [REDACTED] of New York, New York, who attested to the applicant's residence in United States since 1981. Mr. [REDACTED] indicated that the applicant has always maintained contact with him.

The director considered the additional affidavits, but determined that they were insufficient to overcome the grounds for denial. The director noted the applicant's departure (April 8, 1981 and November 9, 1982) stamps from Ecuador and his arrival (April 30, 1981 and December 19, 1982¹) stamps into Ecuador did not coincide with his claimed absences (March 13, 1981 to April 8, 1981 and June 4, 1984 to June 22, 1984) from the United States listed on his Form I-687 application. The director determined in light of the contradicting testimony and evidence provided, the applicant had failed to establish eligibility for the benefit sought and denied the application on September 21, 2006.

Regarding the contradicting information between the applicant's Form I-687 application and passport, counsel, on appeal, asserts, in pertinent part:

In fact [the applicant] retained the Legal Services of a non-profit organization and apparently the person who filled out the first Application for Status as a Temporary Resident consigned wrong information on the Number 36 of such application and now [the applicant] is paying the consequences of that error. [The applicant] trusted the person who filled out the application for him and he signed it. In this particular case it is not the responsibility of [the applicant] for such

¹ The date should read December 18, 1982.

mistake. The real fact is that [the applicant] left Ecuador on April 8, 1981 and re-entered Ecuador on April 30, 1981 and also left Ecuador on November 9, 1982 and re-entered Ecuador on December 19, 1982. If we add both periods of time it is concluded that [the applicant] did not exceed the 180 days absence from the United in consequence he is still being eligible to get his Legal Permanent Residence under the Legal Immigration Family Equity (LIFE) Act.

On appeal, counsel submits affidavits from [REDACTED] who attest to the applicant's residence in the United States since 1981 and to the applicant's moral character. Counsel also submit photocopies of documents that have no bearing in this proceeding as they serve to attest to the applicant's residence and physical presence in the United States *subsequent to* the requisite period.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through June 21, 1984, as he has presented contradictory and inconsistent documents, which undermines his credibility.

Counsel's assertion that someone other than the applicant prepared the Form I-687 application has no merit. The Form I-687 application does not indicate that anyone other than the applicant completed the application. No information is listed in items 48 and 50 of the Form I-687; items 48 and 50 request the name, address and signature of the person preparing the form. The applicant, in affixing his signature on the Form I-687, certified that the information he provided was *true* and *correct*

The affiants all indicate that they have known the applicant since 1981, but failed to provide details regarding the nature or origin of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence during the requisite period seriously detracts from the credibility of his claim

letter failed to include the applicant's address at the time of the alleged employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to 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.

The letter from Reverend [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests.

On two separate Form G-325A, Biographic Information, signed December 20, 2002 and May 4, 2004, the applicant indicated that he resided in his native country, Ecuador, from 1958 to 1984. The applicant, in affixing his signature on the forms, certified that the information he provided was *true* and *correct*

These factors tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

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 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 credibility issues arising from the documentation provided by the applicant, it is determined 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 from before January 1, 1982 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, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, the record contains court documentation from the Criminal Court of the City of New York, which reveals that on or about May 23, 1993, the applicant was arrested and charged with driving while intoxicated, a violation of VLT 1192.2, driving while intoxicated with .08 percent or more alcohol, a violation of VLT 1192.3 and resisting arrest a violation of VLT 205. 30. On August 10, 1993, the applicant pled guilty to driving while intoxicated. Case no. [REDACTED]. While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. §§ 245a.11(d)(1) and 18(a), the AAO notes that the applicant does has a misdemeanor conviction.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.