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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 02 100 60802

Office: NEW YORK Date:

SEP 09 2008

IN RE: Applicant: [REDACTED]

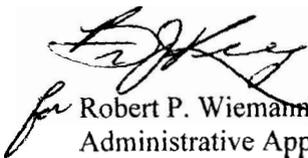
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.


for 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 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 submits a brief disputing the director's findings.

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

- A notarized affidavit from [REDACTED] of New York, New York, who indicated that the applicant resided in her home at [REDACTED], New York, New York from October 1981 to June 1987.
- A notarized affidavit from [REDACTED] of Flushing, New York, who indicated that the applicant resided in his home at [REDACTED], Flushing, New York from July 1987 to October 1990.
- Notarized affidavits from [REDACTED] of Little Neck, New York and [REDACTED] of Douglaston, New York, who attested to the applicant's absence from the United States from August 15, 1987 to September 17, 1987. The affiants asserted that, "he [the applicant] come with me to the airport."
- Notarized affidavits from [REDACTED] of South Farmingdale, New York, [REDACTED] of Little Neck, New York and [REDACTED] of Bayside, New York, who attested to the applicant's New York residence at [REDACTED], Flushing from July 1987 to October 1990.
- A notarized affidavit from [REDACTED] of Brooklyn, New York, who attested to the applicant's New York residences at [REDACTED], from October 1981 to June 1987 and at [REDACTED] from July 1987 to October 1990. The affiant asserted that he has been a friend of the applicant since 1982.
- A notarized affidavit from [REDACTED], manager of Teatro Puerto Rico in Bronx, New York, who indicated that the applicant was employed as a cleaner from November 1981 to August 1984 and received a yearly salary of \$9000.00. The affiant asserted that this information was taken from its personnel records and because of their confidentiality, they are not open to inspection.
- A letter dated November 1991 from [REDACTED], owner of [REDACTED] in Brooklyn, New York, who indicated that the applicant was in his employ as a general helper and a delivery person from September 1984 to May 1985.
- A notarized affidavit from [REDACTED] of Great Neck, New York, who indicated from May 1985 to November 1985, the applicant was self-employed as he painted her house and completed few odd jobs around her home.
- A letter dated November 20, 1991, from [REDACTED], manager of Tiffany Two-Mirror Designs, Ltd., in Little Neck, New York, who indicated that the applicant was employed as a general helper from December 1985 to March 1986.
- Wage and tax statements for 1987 and 1988 along with several earning statements for the periods ending June 9, 1986 to February 22, 1988 from [REDACTED] c. in Great Neck, New York.
- An employment letter dated November 1991 from [REDACTED], owner of [REDACTED] Inc. in Great Neck, New York, who indicated that the applicant has been employed as a stock clerk since May 1986. The affiant attested that the applicant was also known by the alias [REDACTED]

On June 13, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that he had provided no credible evidence of his presence in the United States prior to 1986, his application contained several discrepancies which undermined his credibility, and he had provided several contradicting accounts of the time and manner of his entry in the United States. Specifically, the affidavit from [REDACTED] and the letter dated November 20, 1991 from [REDACTED] lacked probative value. [REDACTED] attested to the applicant's residence in 1981, but claimed to have met the applicant in 1982. The letter from [REDACTED] listed its telephone number with an area code of "212." However, the area code for Queens County had changed from 212 to 718 on September 1, 1984. The director noted, "[i]t is not believable that a letter dated in 1991 would bear an area code that had been out of service for over seven (7) years."

The applicant was advised that in filing his Form G-639, Freedom of Information Act, on October 30, 1991, he indicated that he entered the United States on March 28, 1985 through JFK airport in New York. However, at the time of his LIFE interview, the applicant indicated that he only departed once in 1987 since his alleged entry in 1981 and was never issued a visa during the requisite period. The director determined that if the applicant had entered the United States through JFK airport, he would have entered with a visa.

The applicant was also advised that the Form I-130, Petition for Alien Relative, filed on his behalf by his spouse on December 30, 1993, indicated, at item 14, that the applicant arrived in the United States as a stowaway. However, during his LIFE interview, the applicant indicated that he entered without inspection in 1981 and 1987.

Counsel, in response, argued that the applicant had submitted 13 affidavits; however, the director only discussed 2 and ignored the remaining affidavits and that the Form I-130 was neither prepared nor signed by the applicant. Regarding the letter from Tiffany Two-Mirror Designs, Ltd., counsel asserted, "[t]he possibility that they used old stationery is not considered, yet a company in that type of business may not have much need for letterhead stationery and it is quite possible that they used old stationery." Regarding the affidavit from [REDACTED], counsel asserted, "we would point out that he does NOT state that he first met [the applicant] in 1982, he stated that he became his friend in 1982. He may well have met [the applicant] in 1981. [REDACTED] is now deceased, according to [the applicant]." Counsel asserted that overall the preponderance of the evidence indicates that the applicant is eligible for the benefit being sought.

The director, in denying the application, noted that all documents submitted must have an appearance of reliability. If the documents appear to have been forged or otherwise deceitfully created or obtained then the documents are not credible. The director determined that counsel's statements were insufficient to overcome the grounds for denial and denied the application on September 28, 2006.

On appeal, counsel asserts that the statement, "[i]f the documents appear to have been forged or otherwise deceitfully created or obtained then the documents are not credible" has no basis in the evidence. The Notice of Intent to Deny made no accusation that the documents were forged or deceitfully created or obtained. Counsel asserts, in pertinent part:

As mentioned in the response to the Notice, there were 11 affidavits which were completely ignored --these are sworn statements which give the affiant's address, the [REDACTED] affidavit is explained; [REDACTED]'s affidavit was not given any credence at all; the Tiffany Two-Way Mirror Designs letter was discredited without giving the applicant an opportunity to give any explanation; and the Notice holds the statement of another person (the petitioner on the I-130) against him without asking him who prepared the I-130 and under what circumstances.

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 the applicant and 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 May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

Regarding the Form I-130, counsel asserted that the form was neither prepared nor signed by the applicant. The AAO agrees with counsel; however, this does not diminish the veracity of the wife's testimony. No explanation has been provided why the wife would provide such conflicting information.

As conflicting information has been provided, it is reasonable to expect an explanation from the affiants in order to refute the director's findings. Counsel, however, has not provided any evidence from a representative of Tiffany Two-Mirror Designs, Ltd., to corroborate his assertion or evidence that the affiant, [REDACTED], is deceased. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, Mr. Lucas, in his affidavit, failed to provide details regarding the nature or origin of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.

The affidavits from [REDACTED] and H [REDACTED] attested to the applicant's residence at [REDACTED] Flushing, New York from July 1987 to October 1990. However, the applicant's 1987 Form 1040, Individual Income Tax Return, and 1987 and 1988 wage and tax statements list a different address as his place of residence, and on his Form G-325A, Biographic Information, filed with his Form I-130, the applicant indicated that he resided at [REDACTED] Flushing, New York from "October 1987." Further, none of the affiants provided any 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 for the entire requisite period seriously detracts from the credibility of his claim. It is noted that the envelopes addressed to [REDACTED] Flushing, New York were postmarked *subsequent* to the requisite period.

The employment letters from [REDACTED] and [REDACTED] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants 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

Counsel has not addressed the issue regarding the applicant's claim on the Form G-639 to have entered the United States on March 28, 1985.

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 reflects that the applicant was convicted under the alias, Cesar Sanches on August 23, 1988 for violating New York Penal Law section 240.20, disorderly conduct. While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a), the AAO notes that the applicant does has a misdemeanor conviction.¹

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

¹ An offense that is punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. Disorderly conduct is classified a “violation” by the state of New York. According to section 10.00(3) of the New York State Penal Law, “violation” means an offense that can carry a possible sentence of imprisonment for up to fifteen days. Consequently, for immigration purposes, this offense is considered a “misdemeanor” as defined by 8 C.F.R. § 245a.1(o).