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[REDACTED]

FILE: [REDACTED]  
MSC 02 242 61821

Office: NEW YORK

Date: SEP 22 2008

IN RE: Applicant:

[REDACTED]

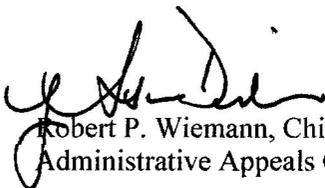
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, 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 resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel contends that the documentation and oral testimony were sufficient for the director to approve the application. Counsel asserts that the director's decision is arbitrary and an abuse of discretion.

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 must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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 (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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.12(f).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant’s claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

On May 30, 2002 the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). The applicant provided the following documentation relating to the requisite period:

1. A Form W-2 Wage and Tax Statement for 1987 in the applicant’s name. This provides some evidence of the applicant’s residence in the United States in 1987.
2. Two envelopes addressed to the applicant in New York, postmarked in 1988. This will be given some weight of the applicant’s residence in the United States in 1988.
3. The record contains three declarations from [REDACTED] (no last name provided) and Diarassouba (no last name provided). [REDACTED] stated that he has been a close friend of the applicant since 1982. [REDACTED] stated that the applicant has been a close friend since 1983. Diarassouba stated that the applicant has been a friend for a very long time. All of the declarations are on letterhead from different companies, but the declarants failed to state their relationship with their respective company. In addition, all of the declarants failed to provide details regarding their claimed friendships with the applicant or to provide any information that would indicate personal knowledge of the applicant’s places of residence or the circumstances of his residence over the years of their claimed relationships. All of the declarants failed to note how or where they met the applicant. One of the declarants failed to provide a time period for his claimed

relationship with the applicant. Lacking relevant details, these declarations have minimal probative value.

4. An affidavit, dated January 28, 1991, from [REDACTED] who stated that the applicant resided with him at [REDACTED] in New York, from November 1981 to June 1987. He also stated that the rent receipts and household bills were in his name and the applicant contributed towards the payment of the rent and household bills. This affidavit is consistent with the applicant's Form I-687 and will be given some weight in support of the applicant's claim.
5. The record contains two declarations of employment from [REDACTED]. [REDACTED] stated that he has known the applicant since 1987 and the applicant is employed at [REDACTED]. [REDACTED] stated that the applicant has been employed by [REDACTED] since May 5, 1982. Both declarations are on company letterhead. However, both declarants failed to provide the applicant's address at the time of employment, 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 as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The declarations provide minimal probative value.
6. A declaration, dated June 29, 1990, from [REDACTED]. The declarant stated that the applicant is a member of the Muslim community, has been here since January 1981, and attends prayer services at the Masjid. The declarant failed to state the address where the applicant resided during membership period, establish how the author knows the applicant, and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The declaration provides minimal probative value.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although there is evidence of the applicant's residence in the United States in 1987, not one of the declarants indicates credible personal knowledge of the applicant's entry into the United States in 1981 or provides sufficient details regarding the circumstances of his residence during the requisite period.

In addition, as noted by the director in the Notice of Intent to Deny, dated April 16, 2007, the applicant's testimony contains discrepancies in his April 19, 2004, interview, his Form I-687 (Application for Status as a Temporary Resident) and his Form G-325A (Biographic Information). At his interview, the applicant stated that he entered the United States on April 19, 1982, hidden in a trunk while crossing the Canadian border into Detroit. In his Form I-687, the applicant stated that he entered the United States on November 17, 1981, without inspection at the Canadian border. Finally, in his G-325A, the applicant stated that he resided in Nombatele, Libreville, Gabon from March 1980 through October 1987.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistency.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9<sup>th</sup> Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after provided an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. Although the applicant and counsel were provided opportunities to resolve these discrepancies, they failed to do so. Therefore, based on the applicant's own contradictory testimony, he has failed to establish that he entered the United States prior to January 1, 1982.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period.

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 inconsistencies noted in the record and the lack of credible documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.