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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

[REDACTED]

Office: NEW YORK

Date:

SEP 30 2008

MSC 01 268 60170

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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. The director noted that the applicant failed to submit additional evidence in response to a June 12, 2006 notice of intent to deny (NOID).

On appeal, the applicant asserts that he timely submitted, in person, additional documents in response to the NOID. The applicant submits additional documents 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.* 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).

In the Notice of Intent to Deny (NOID), dated June 12, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant had submitted questionable documents, including letters that were similar to those presented by other applicants. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated July 28, 2006, the director noted that the applicant failed to respond to the NOID, and denied the application based on the reasons stated in the NOID.

On appeal, the applicant states that he had, specifically, in response to the NOID submitted a copy of: his birth certificate; his parents' marriage certificate; early school records; and, his father's U.S. Individual Income Tax Return. The applicant submits additional copies of these documents on appeal.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate his continuous residence in the United States in an unlawful status during the requisite period.

In an attempt to establish continuous unlawful residence in the United States during the requisite period since prior to January 1, 1982, the applicant submits letters, affidavits, and school records as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Affidavits and letters

The applicant submitted:

1. A sworn affidavit from [REDACTED], sworn to on August 6, 1993, stating that he has known the applicant to have resided in the United States since March 1981. [REDACTED] attests that he and the applicant were classmates and good friends since first grade at PS 68, and at John Adams High School. [REDACTED], however, does not indicate how he dates his acquaintance with the applicant or when they were in first grade.
2. An undated sworn affidavit from [REDACTED] sworn to on August 6, 1993, stating that he has known the applicant to have resided in the United States since 1981 when the applicant and his family came to the United States. This affidavit, however, is not probative as it is not dated and, therefore, does not indicate for what period of time the

affiant has known the applicant. Also, the affiant does not indicate whether the applicant has been a continuous resident since 1981.

3. Sworn affidavits from [REDACTED], and [REDACTED], sworn to on August 6, 1993, stating that they have known the applicant to have resided in the United States since March 1981. [REDACTED] states that she has been good friends and neighbors with the applicant since they lived in Union City and after they moved to Perth Amboy. Ms. [REDACTED] states that she has been good friends and neighbors with the applicant in Union City since 1981 when the applicant came to the United States.
4. A notarized letter from [REDACTED] dated August 2, 1993, stating that the applicant has lived with her since March 1981. [REDACTED] states that rent receipts and household bills are in her name, and that the applicant contributed towards the rent and household bills.

In addition, the applicant submitted school records from Jefferson High School in New York for the school years from 1989 – 1993.

Also, the applicant submitted various documents, including tax returns. These documents, however, are not probative as they relate to periods after 1989.

The applicant has submitted letters, affidavits, and school records in support of his application, however, contrary to counsel's assertion, the applicant has failed to submit sufficient reliable evidence of his continuous residence in the United States throughout the requisite period. First, the applicant has submitted questionable documentation. Specifically, the applicant submitted a questionable letter from [REDACTED] stating that the applicant lived with her since March 1981, and that he had contributed towards the rent and household bills. The record, however, reflects that the applicant, who was born in 1975, was only 6 years old in March 1981, and therefore, could not have contributed towards rent or household expenses. The applicant does not provide any supporting documentation as to how he was able to make contributions towards rent or household expenses at such a young age.

Also, the applicant claims that he has been residing in the United States since 1981, when he was 6 years old. The applicant submitted high school records from John Adams High School for the period from 1989 through 1993. He also submits an affidavit from [REDACTED] stating that he and the applicant were classmates and good friends since first grade at PS 68, and at John Adams High School. However, the applicant does not submit any elementary school records, nor does he provide an explanation as to why he is unable to provide his primary school records.

In addition, the applicant does not provide any documentation whatsoever of how he sustained himself from 1981, the year of his claimed entry, through 1988. During these years the applicant was less than 14 years old, and therefore, would have had to have been provided for and cared for by an adult. Yet, no such documentation was provided.

These discrepancies cast considerable doubts on whether the applicant resided in the United States since 1981 as he claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has not provided any reliable evidence of residence in the United States for the period prior to 1989. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. 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. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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.