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

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: Chicago Date: JUN 02 2006
MSC 01 300 60480

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 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.

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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded the applicant had not established that he had continuously and unlawfully resided in the United States during the entire qualifying period from January 1, 1982 through May 4, 1988 and, therefore, denied the application.

Counsel alleges on appeal that the director did not "acknowledge" evidence timely submitted by the applicant in response to the director's Notice of Intent to Deny the Application for Adjustment to Permanent Residence (NOID). Although counsel submitted a copy of a letter dated July 10, 2003, purporting to respond to the NOID, he submitted no evidence that the letter, with its accompanying documentation, was submitted to the district office prior to issuance of the director's decision. Nonetheless, we will consider this documentation on appeal.

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 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.

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 applicant claims to have been in residence in the United States since 1978. The record contains the following documents relevant to the application:

- A copy of a visa indicating that the applicant was admitted into the United States on July 14, 1978 pursuant to B-2 classification as a temporary nonimmigrant visitor. The visa was valid until August 16, 1978.

- An October 22, 2002 sworn affidavit from [redacted] who stated that he is a close friend of the applicant and that the applicant has resided in the United States since 1978.

- An October 22, 2002 sworn affidavit [redacted] stating that he is the owner of the [redacted] in Perry, Georgia, and that the applicant worked at his house as a babysitter from 1978 to 1989.

- A July 5, 2003 letter [redacted] in which he stated that he first saw the applicant as a patient in 1984 and that his last visit was in July 2003.

- A September 30, 1999 Social Security Statement, reflecting that the applicant was paid wages from 1978 to 1980 and from 1990 to 1998.

The applicant claims on his Form I-687 that he worked as a [redacted] on [redacted] Georgia from December 1980 to August 1989. This conflicts with the statement [redacted] who claimed that the applicant worked as his babysitter from 1978 to 1989. [redacted] not indicate the compensation paid to the applicant, but it is noteworthy that, while an employer reported earnings for the applicant from 1978 to 1980, no earnings were reported for the applicant during the qualifying period. 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 applicant submitted no clear and uncontroverted evidence of his residency in the United States from 1981 through 1988. The record does not establish by a preponderance of the evidence that it is more probable than not that the applicant resided continuously in the United States prior to January 1, 1982 to May 4, 1998.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.

It is further noted that on May 23, 1993, the applicant was charged with sexual battery (Ga. Code Ann. § 16-6-22.1). On August 27, 2003, the applicant pled guilty to the change and was convicted and given a one-year suspended sentence and fined.[1] Indecent assault is a crime involving moral turpitude. *See Gouveia v. INS*, 980 F.2d 814 (1st Cir. 1992). Although the applicant was convicted of a crime involving moral turpitude, he appears to be eligible for the petty offense exception, and is therefore admissible. Sec. 212(a)(2)(A)(ii)(II), 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

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

[1] State Court of Houston County, Case number 93053603.