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

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[redacted]

FILE: [redacted] Office: CHICAGO Date: JUN 28 2007
MSC 02 144 62570

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. Any further inquiry must be made to that office.

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 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 asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel argues that the director failed to address why the affidavits submitted were deemed not to be credible. Counsel provides copies of documents that were previously submitted in support of the appeal.

An applicant for permanent resident status 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 and through May 4, 1988. 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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- An affidavit notarized April 3, 1991, from [redacted] of [redacted] in Chicago, Illinois, who indicated that the applicant has been in his employ as an independent salesman since December 1981. The affiant indicated, "there has never been any written agreement, just our word of honore [sic]. He takes out jewelry and resales [sic] it with his friends and since I know him well enough. He re-pays what he sells and I take any unsold items."
- A statement dated April 6, 1991, from [redacted], who indicated that the applicant resided in his apartment at [redacted], Chicago, Illinois from December 1981 to March 1985. Several rent receipts from December 15, 1981 to November 13,1985 and a lease agreement entered into on December 15, 1981, were provided as evidence.
- A statement dated April 6, 1991, from [redacted] who indicated that the applicant resided in his apartment at [redacted], Maywood, Illinois from March 1985 to September 1988.
- A letter dated November 23, 1990, from [redacted] of A&S Auto Sales in Stone Park, Illinois, who indicated that he has known the applicant for approximately nine years and "have been selling him car for about 5 years." An Odometer Disclosure Statement dated October 4, 1990 was provided as evidence.
- A statement from Bank of Bellwood in Illinois regarding the amount of interest for 1988 that was reported to the Internal Revenue Service.

The applicant also submitted documentation from Wyndham Gardens Hotel, which attested to his employment during 1988. As claimed on the applicant's Form I-687 application, said employment occurred subsequent to the requisite period and, therefore, will not be considered.

The director issued a Notice of Intent to Deny dated February 23, 2005, which advised the applicant that attempts were made to contact [redacted] and [redacted], however, the telephone numbers provided were no longer in service. The applicant was also advised that no additional primary or secondary evidence had been submitted and that he had provided a limited amount of evidence for the period in question. The director determined that the applicant had not established by a preponderance of evidence that he met the requirements to adjust his status under the LIFE Act.

The applicant, in response, provided additional affidavits from [redacted] and [redacted] who reasserted the veracity of their claims and provided their current addresses and telephone numbers. The applicant also provided a letter from [redacted], president of [redacted], who indicated "according to our records" the applicant was an independent salesman from 1981 to 1989. It appears that [redacted], is affiliated with [redacted] as the address of [redacted] is listed at the top of the letter.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence have been considered. The AAO, however, does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States from before January 1, 1982 through May 4, 1988. Specifically, the record contains two separate Form I-687 applications signed and dated by the applicant on October 30, 1990 and May 20, 1991. In the first application, the applicant did not claim residence at either [redacted] or [redacted] In addition, two of the rent receipts signed by [redacted] were dated July 15, 1985 and November 13, 1985. The applicant, however, did not claim on his subsequent Form I-687 application to have resided at this address during this timeframe, and the receipts contradicts [redacted] affidavit.

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, absence of a plausible explanation along with the absence of contemporaneous documentation, 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 on April 30, 1992, in the Cook County Circuit Court of Illinois of battery, a violation of section 12-3A2. While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1), the AAO notes that the applicant does has a misdemeanor conviction.

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