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

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[redacted]

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FILE: [redacted] Office: NEW YORK Date: SEP 19 2007

MSC 01 304 60264

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, New York, New York, and is now before the Administrative Appeals Office on appeal. The matter will be remanded for further action and consideration.

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's explanation is completely ingenuous and entirely believable and does in fact overcome the grounds for the denial of his application.

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.

The director issued a Notice of Intent to Deny dated July 21, 2005, which advised the applicant that he had presented contradicting testimony at the time of his LIFE interview. Specifically, the applicant was asked approximately four times how many times had he traveled outside of the United States and each time he answered he had never departed the United States since his arrival in July 1981. The applicant, however, listed on his Form I-687 application that he departed the United States to visit Canada from August 1, 1987 to August 31, 1987.

The applicant, in response, asserted, in part:

> I answered the question wrongly because of a misunderstanding. To wit: I understood the officer's question to be whether or not I had ever gone back to Ghana. I truthfully answered no.
>
> It never occurred to me that she was referring to my trip to Canada. Canada looks and smells just like the United States and has the same kind of people. I don't think of it as foreign and it didn't come to my mind when I was asked about foreign travel.

On appeal, the applicant asserts, in part:

> I fully realize that Canada is foreign in the sense that there is a separate jurisdiction and that there is a frontier to be crossed. What I said in my affidavit was that I didn't think of it as foreign because it looks and smells like the United States. I never said that it is the same as the United States only that it is so similar that I don't think of it as foreign.

With respect to his absence from the United States in 1987, the applicant presented a declaration notarized May 14, 1991, from a cousin, [redacted] of Toronto, Canada, who attested to applicant's visit to his residence in Toronto, Canada from August 1, 1987 through August 30, 1987. A review of the applicant's Form I-687 application and Form for Determination of Class Membership that were signed in 1991, reflects the applicant had declared his August 1987 departure to Canada on both forms. This information coupled with the applicant's explanations are plausible and reasonable under these circumstances. Accordingly, the applicant has overcome the single deficiency outlined in the director's decision.

Nevertheless, the applicant indicated on his Form for Determination of Class Membership that he reentered the United States with a nonimmigrant visa on August 30, 1987. As a result of the applicant's misrepresentation in procuring a visa in 1987, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act). However, such grounds of inadmissibility may be waived The director shall accord the applicant the opportunity to file an application for waiver of inadmissibility pursuant to regarding section 245A(d)(2) of the Act and 8.C.F.R. § 245a.18(c).

Finally, a review of the record reveals a contradiction between his testimony taken at the time of his LIFE interview and the affidavit from his employer. The interviewing officer's notes reflect this discrepancy, but the director did not address this issue in the Notice of Intent to Deny. The applicant claimed on his Form I-687 application to have been employed as a barber during the requisite period and provided evidence of said employment. However, at the time of his interview, the applicant indicated he sold newspapers and washed cars during the requisite period. Likewise, the applicant claimed to have resided at [redacted] since February 1981. However, the affiants attested to the applicant's residence at this address prior to February 1981. These inconsistencies were also not addressed by the director in her Notice of Intent to Deny.

Accordingly, the case is remanded for the issuance of a Notice to Deny addressing this matter pursuant to 8 C.F.R. § 245a.20(a)(2), and for the entry of a new decision in accordance with the foregoing. If the new decision is adverse, it may be certified to this office.

ORDER: The matter is remanded for further action and consideration pursuant to the above.