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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: NEW YORK CITY Date: DEC 01 2008

MSC 02 232 61968

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: SELF REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that he has submitted sufficient evidence to establish that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through May 4, 1988.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: "An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed." (Emphases added.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. *See* 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; 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.

The applicant, a native of Trinidad and Tobago who claims to have lived in the United States since July 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 20, 2002.

In a Notice of Intent to Deny (NOID), dated April 7, 2006, the director cited inconsistencies between the applicant's testimony at his LIFE legalization interview on April 5, 2004 and documents in the record. The director noted that during the interview, the applicant stated that he entered the United States on July 15, 1981 and left the United States in August 1981 for a two day trip to Canada, but on his Form I-687, dated August 21, 2000, the applicant stated that he traveled to Canada in June 1987 for a wedding and returned within the same month. The director indicated that this contradiction undermined the credibility of the applicant's claim that he resided continuously in the United States from before January 1, 1982 through May 4, 1988. The director also questioned the validity of the lease agreement(s) submitted by the applicant as evidence of his continuous residence in the United States. The director noted that this type of document can be easily forged. The applicant was given 30 days to submit additional evidence.

In response, the applicant offered some explanations for the evidentiary inconsistencies and deficiencies noted by the director and submitted an additional document dated March 23, 1989.

On September 21, 2006, the director issued a Notice of Decision denying the application. The director indicated that the information and the document submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal, the applicant asserts that he has submitted sufficient evidence to establish his eligibility for LIFE legalization, and that the director failed to take into consideration the difficulty of gathering evidence after a significant lapse of time. The applicant submitted no additional documentation with the appeal.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The only documentation that the applicant submits in support of his claim that he entered the United States before January 1, 1982 and resided continuously in an unlawful status through May 4, 1988, consists of **photocopies** of residential apartment leases between the applicant and in Brooklyn, New York, for [redacted], in Brooklyn, for the period of October 1, 1981 through October 1, 1989, and a letter from the National Commercial Bank of Trinidad and Tobago, dated March 23, 1989, which was addressed to the applicant at that address in care of The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The applicant's claims that he entered the United States in July 1981, resided continuously in the country through May 4, 1988, and had just one brief trip outside the country to Canada in June 1987, are contradicted by records from United States Citizenship and Immigration Services (USCIS). According to USCIS records, the applicant entered the United States three times with a valid visa during the 1980s. The first documented entry of the applicant into the United States was on October 5, 1983, through New York City, as a B-2 visitor. The record shows that the applicant departed the United States on September 8, 1983. The next entry of the applicant was on July 7, 1987, through Miami, Florida, as a B-2 visitor. The record shows that the applicant departed the United States on August 13, 1987. The third entry of the applicant into the United States was on April 2, 1988, through New York City, as a B-2 visitor. There is no record of departure following the third entry. This information above casts grave doubt on the applicant's claim that he entered the United States in July 1981 and resided continuously in the country in an

unlawful status through May 4, 1988. The information further undermines the credibility of the photocopied residential apartment leases submitted by the applicant as evidence of his residence in the United States during the requisite period for adjustment of status under the LIFE Act.

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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The photocopies of the residential apartment leases between the applicant and [redacted] for the time period of October 1, 1981 through October 1, 1989, do not include notarial stamps or other official markings to authenticate the dates indicated on the leases. Nor are they supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the Brooklyn, New York, address during the years indicated. In view of these substantive deficiencies and the applicant's overall lack of credibility, the residential lease agreements have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letter from the National Commercial Bank of Trinidad and Tobago, dated March 23, 1989, addressed to the applicant in care of [redacted] is outside the statutory period required for adjustment of status under the LIFE Act. Thus, it has little or no probative value in this proceeding.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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