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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC 02 131 60051

Office: NEW YORK

Date:

DEC 24 2008

IN RE:

Applicant: [REDACTED]

APPLICATION:

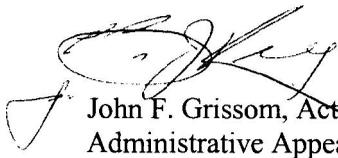
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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 National Benefits Center. If your appeal was sustained, or if your case 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.


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, New York, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient evidence in the form of affidavits to establish the requisite continuous residence. Counsel submits additional evidence 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).

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.

In the Notice of Intent to Deny – Request for Evidence (NOID), the director requested that the applicant submit evidence of his entry into the United States before January 1, 1982, and sufficient evidence demonstrating his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director noted that the applicant's testimony regarding his entry into the United States was not credible, and the affidavits and letters submitted by the applicant were questionable, and were not verifiable or reliable. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated April 23, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant failed to respond to the NOID.

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, and his physical presence, during the requisite period. In an attempt to establish continuous unlawful residence in the United States during the requisite period in this country since prior to January 1, 1982, the applicant submitted various affidavits and letters 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 & Letters

The applicant submitted the following:

1. An affidavit from [REDACTED], stating that the applicant lived with him in Dayton, Georgia from February 1981 to May 1984.

2. An affidavit from [REDACTED] stating that he met the applicant in Riverdale, Maryland, in November 1981, and he saw the applicant again in July 1984 at his residence in Easton, Maryland. [REDACTED] also states that he knows that the applicant has resided continuously in the United States from November 1981 to 1988, because the applicant visited him several times. The affiant, however, does not indicate how frequently, and under what circumstance he met the applicant during these visits.
3. An affidavit from [REDACTED], stating that the applicant came to visit him at his home in Riverdale, Maryland, in November 1981. [REDACTED] also states that in January 1983 he went to visit the applicant in Dayton, Georgia, and he saw the applicant again in August 1985, and, that the applicant moved to Brooklyn in June 1987, and he visited the applicant in Brooklyn in June 1998. In addition, the affiant states that he knows that the applicant has resided continuously in the United States from January 1981 to May 1988. The affiant, however, does not indicate whether and how he maintained a relationship with the applicant during that time.
4. Affidavits from [REDACTED], and [REDACTED] both stating that they first met the applicant in New York, in January 1981. The affiants also state that the applicant moved to Dayton, Georgia, and in May 1987 the applicant returned to live in New York. The affiants further state that they know that the applicant has resided continuously in the United States from January 1981 to May 1988. The affiants, however, do not indicate whether and how they maintained a relationship with the applicant during that time.
5. Affidavits from [REDACTED] and [REDACTED], stating that the applicant has been residing in the United States since 1981. [REDACTED] however, does not indicate how he dates his acquaintance with the applicant and whether he maintained a relationship with the applicant. [REDACTED] states that he met the applicant at the Islamic Center in Atlanta, Georgia, in March 1981, and that they became friends and they saw each other almost every week at Friday afternoon prayers. [REDACTED] states further that the applicant moved to New York in May 1987.

In addition, the applicant submitted a copy of a lease, dated February 1, 1981. The apartment lease indicates that it is for property rental in the State of Georgia, County of Whitfeld, located at [REDACTED]. The lease, however, is not probative as it does not indicate a complete address for the premises.

Contrary to counsel's assertion, the applicant has submitted questionable documentation. The applicant has provided affidavits and letters attesting to his continuous residence in the United States during the requisite period. However, the record reflects that the applicant submitted an Application for Naturalization, Form N-400, filed on January 8, 1998, that is inconsistent with his Form I-687, and his supporting affidavits and letters. The applicant claims that he has resided in the United States since February 1981. However, on his Form N-400 application the

applicant stated that he had resided in the United States for seven (7) years. Also, on his Form I-687, which the applicant signed in February 1991, he indicates that he had two children, both born in Pakistan, in 1979 and 1988, respectively. However, on his Form N-400 application the applicant indicates that he had only one child, born in Pakistan on September 29, 1997. It is also noted that although the applicant filed a Form N-400, Application for Naturalization, the applicant was not a permanent resident as he indicated on his application. Moreover, the information he provided on the Form N-400 contradicts his Form I-687, and his supporting documentation.

The above discrepancies cast considerable doubt on whether the applicant resided in the United States from 1981 as he claimed. 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.

In addition, although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. It is also noted the applicant has not provided any reliable documents, such as school or medical records, for the relevant 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.