U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529-2090

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

L 2

[redacted]

FILE: [redacted] Office: GARDEN CITY Date: DEC 2 9 2008

MSC 02 156 60243

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).

IN BEHALF OF APPLICANT:

[redacted]

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

The 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 director did not give proper consideration to the evidence submitted by the applicant in support of his application. Counsel submits copies of previously provided documents along with additional evidence in support of the appeal.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 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).

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

At the time the applicant filed his Form I-485 application, he presented no evidence to establish continuous unlawful residence in the United States during the requisite period. At the time of his LIFE interview on August 11, 2004, the applicant was given a Form I-72, which requested the applicant to provide evidence of his continuous residence during the requisite period. In response, the applicant submitted:

- A notarized affidavit from [redacted] of Brookville, New York, who indicated that he has known the applicant since 1986 and attested to the applicant's moral character.
- A notarized affidavit from of Douglas Manor, New York, who indicated that he met the applicant at a gas station in 1981, and attested to the applicant's moral character.
- A notarized affidavit from of Bronx, New York, who indicated that he met the applicant at a restaurant in Astoria in 1981, and attested to the applicant's moral character.
- A notarized affidavit from [redacted] of Rego Park, New York, who indicated that he has known the applicant since 1981 and that the applicant comes to his grocery store to buy groceries every week.

On June 12, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was further advised that he failed to provide evidence to support his claim to have traveled to Pakistan in 1987 and that the remaining documents submitted serve to establish his residence subsequent to the qualifying period.

The applicant, in response, submitted:

- An affidavit [redacted] of Richmond Hill, New York, who indicated that he first met the applicant at a social gathering in the middle of 1981. The affiant asserted that he visited the applicant's home in Queens Village, Queens, New York, and attended social, religious and other community events together. The affiant attested to the

applicant's residence in Freeport, Long Island in 1984 and to his departure to Pakistan in 1987. The affiant indicated that he was not aware of the applicant's presence in the United States from the Fall of 1987 to 1991.

- An additional affidavit from [redacted], who attested to the applicant's illegal entry into the United States in 1981. The affiant asserted, "I learnt this from him when I first met him several years ago. I truly believed him because he had no reason to lie to me." The affiant attested to the applicant's 1987 departure from the United States and to his employment at "various companies." The affiant indicated that he distinctly remembered the applicant residing in Queens Village for three years and in Freeport, Long Island for another three years until he moved to Chicago in 1987.
- A letter dated March 18, 1988, from executive director of [redacted] in Chicago, Illinois, who indicated that the applicant was employed on the weekends on a part-time basis from June 2, 1987 to March 18, 1988.
- A letter dated June 20, 1981, from an attorney, [redacted], who indicated the applicant visited his office inquiring about the possibilities of his adjustment of status in the United States.
- A letter dated March 2. 1987, from manager of [redacted]. in New York, New York, who indicated that the applicant was employed as a cleaner at on a part-time basis from August 1981 to March 1984.
- A job termination letter dated June 15, 1981 from [redacted], president of [redacted]., in New York, New York.
- A letter dated February 26, 1984, from the New York Telephone Company regarding an application for new telephone connection.
- An affidavit from [redacted] of Toronto, Canada, who attested to the applicant's visit to Canada and to the applicant's illegal entry through the Canadian border in February 1981.
- A lease agreement entered into on March 1, 1981 between the applicant and [redacted] for a residence at Queens Village, New York.

The director, in denying the application, noted that the lease agreement did not include a telephone contact number or other corroborative evidence such as rent receipts, and that the affidavits from the affiants did not include proof of direct knowledge of the events being attested.

On appeal, counsel submits:

- Photocopies of four rent receipts from dated March 1, 1981, December 4, 1981, November 3, 1982, and June 1, 1983.
- A letter dated March 10, 1984 from [redacted], of the Islamic Center in Jersey City, New Jersey, who indicated the applicant became a regular member on June 20, 1981 and attended Friday prayer.
- A letter dated December 28, 1986, from [redacted] of the [redacted] who indicated that the applicant was a member from May 12, 1981 to May 7, 1984.

The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The letters from [redacted] and [redacted] have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Furthermore, the applicant indicated at item 34 on his Form I-687 application that he was not affiliated or associated with any clubs and religious organization during the requisite period.

The rent receipts lack probative value as they indicate that $262.00 was paid each month for the leased premises; however, the lease agreement indicates that the rent was for $250.00.

The employment letters from [redacted] and [redacted] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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. Furthermore, the employment letters including the letter from [redacted] raise questions to their authenticity as the applicant did not claim to have worked at these entities on his Form I-687 application.

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 provided by the applicant, 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.

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