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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JAN 31 2006

MSC 02 226 61710

IN RE: Applicant: [redacted]

PETITION: 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 PETITIONER:

[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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding the applicant submitted insufficient evidence to credibly document his continuous residence in an unlawful status during the requisite period. Specifically, the director found that the applicant's sworn statement in his interview on April 6, 2004 contradicted previous claims regarding his trips outside of the country during the relevant period. Consequently, the director issued a Notice of Intent to Deny (NOID) the application on June 8, 2005, and afforded the applicant 30 days in which to submit credible evidence to show that he had continuously resided in the United States since before January 1, 1982 and May 4, 1988. The applicant's response, received on July 7, 2005, failed to overcome the director's findings, and consequently the application was denied on August 16, 2005.

On appeal, counsel for the applicant alleges that the director erred by failing to properly consider the statements set forth in the response to the NOID.

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).

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 or 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence and continuous physical presence in the United States for the requisite periods. Here, the submitted evidence consists of the applicant's statements on Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on March 27, 1990. On this form, the applicant claimed that he departed the United States for Canada in July 1987 and returned in August 1987.

The applicant also claims that he departed the United States for West Germany in September 1989 and returned in October 1989.

During the applicant's interview on April 6, 2004, the applicant was questioned regarding his absences from the United States. The applicant advised the officer that he had departed the United States four times since arriving without inspection in 1981. He claimed that the first departure was in 1987 when he visited family in West Germany, not Canada as claimed on Form I-687. He claimed he returned to the United States two to three months later, or approximately eight to ten weeks thereafter. He claimed that his second exit from the United States took place in September 1988, when he was absent for approximately ten to fourteen days. It is noted that the applicant did not list any departures from the United States in 1988 on his Form I-687 or class membership affidavit.

On June 8, 2005, the director issued the NOID. Specifically, he advised the applicant that if the statements provided were in fact correct, the applicant would have been absent from the United States between fifty-six to seventy days in the summer of 1987. The director noted that while brief and casual absences will not disrupt continuous residency in the United States, a single absence in excess of 45 days will. The applicant was afforded thirty days to explain this inconsistency and provide additional evidence,

In a response received on July 7, 2005, counsel submitted an affidavit from the applicant dated July 7, 2005. In the affidavit, the applicant claims that he had not traveled to West Germany in July 1987, but traveled to Canada for approximately one month. He claimed that he had confused the two trips and, therefore, his trip to West Germany took place in 1989, not 1987 as claimed in the interview. No additional evidence was submitted.

On August 16, 2005, the director denied the application, finding that the applicant had not overcome the inconsistencies in the evidence submitted. On appeal, counsel for the applicant alleges that the director ignored the affidavit submitted in response to the NOID, and that said affidavit clarified the alleged misunderstanding and thus the application warranted approval.

Upon review, the AAO concurs with the director's findings.

The record contains no documentary evidence to corroborate the applicant's claims. The applicant's assertions both in response to the NOID and again on appeal that his statement regarding his prolonged absence from the United States in 1987 was a mistake is insufficient to overcome the inconsistencies that plague the record. In the June 8, 2004 interview, the applicant provided two inconsistent statements: first, he claimed he was absent from the United States for eight to ten weeks in 1987, and second, he claimed that he again left the country in September 1988. As discussed above, these statements directly contradict the applicant's claims set forth on Form I-687, where he claims two one-month absences from the United States, from July to August 1987 and September to October 1989, respectively. Furthermore, when attempting to explain the inconsistencies, the applicant contends that the dates provided on the I-687 are the correct dates and lengths of absences, and fails to explain why he would claim during his interview that he was absent at any period of time for two to three months when he claimed on Form I-687 that no trip exceeded one month in duration. He also makes no attempt to explain his inconsistent testimony regarding his September 1988 absence. While not relevant to these proceedings because it falls outside of the requisite period, his failure to acknowledge this second inconsistent claim that he departed the United States in September 1988 further casts doubt on the credibility of his most recent statements.

It is further noted that the applicant claimed to fly on Pan Am in 1987 when he departed the country for two to three months. However, he makes no effort to produce travel documents to either prove or disprove the exact year of his trip, the destination, or the length of his departure. He likewise claims that he reentered the United States without inspection in 1987. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of his return. The applicant's conflicting statements under oath, coupled by a lack of contemporaneous documentation to actually prove his continued presence in the United States in the summer of 1987, renders it virtually impossible to conclude that the applicant did not interrupt his continuous residency. 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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

According to the regulation at 8 C.F.R. § 245a.15(c)(1), no single absence from the United States can exceed forty-five days without interrupting continuous residency. Therefore, if the applicant's statement in his June 8, 2004 interview is in fact true, he would have been absent from the United States for a period ranging from 56 to 70 days, thereby easily exceeding the 45 day limit for a single absence. Since there is insufficient evidence to disprove the applicant's claim in the interview, and no documentary evidence to corroborate the claim on Form I-687, the AAO must conclude that continuous residency during the requisite period has not been established.

Given the absence of contemporaneous documentation and unresolved inconsistencies in the record, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Therefore, 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.