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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

L2

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date:

JUL 29 2008

MSC 02 155 61853

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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.

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 district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient credible evidence to establish the requisite continuous residence. Counsel does not submit 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.

On December 6, 2006, the director issued a notice of intent to deny (NOID) informing the applicant of the Service's intent to deny his LIFE Act application because he had failed to establish the requisite continuous residence. The director noted that the applicant testified at his interview on March 10, 2004, that he entered the United States in January 1980 with a visitor's visa, that he had departed the United States in May 1982, and returned with the same nonimmigrant visa. The director also noted that in an attempt to establish his continuous residence the applicant had submitted questionable leases. Specifically, the applicant submitted leases for the years from January 1980 through January 1985 which were written on paper published in 1987 by [REDACTED]

The applicant was granted thirty days to respond to the notice.

The record reflects that in response to the NOID, the applicant's attorney submitted a letter stating that the contradictory statements at the applicant's interview on March 10, 2004, were a result of the applicant's inability to communicate properly in English; that the applicant had been a tenant from 1980 – 1985 without a lease, and in 1987 he signed a lease after a friend advised him to sign one. No additional evidence was submitted.

In the Notice of Decision, dated February 26, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted the applicant's response to the NOID but failed to address the reasons stated in the NOID and failed to submit sufficient evidence to overcome the reasons stated in the NOID.

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. The applicant submitted letters of employment and affidavits as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

### Employment Letters

The applicant submitted a letter of employment from [REDACTED], located in Brooklyn, New York. The letter, notarized on November 27, 1990, states that the applicant had been employed as a painter helper from January 2, 1981 to December 21, 1984. The applicant also submitted a letter of employment from [REDACTED] of ATA Construction, located in Long Island City, New York, stating that the applicant had been employed as a construction helper from November 21, 1985 to January 1, 1988. It is noted however, that the letters failed to show periods of

layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant also submitted an affidavit from: [REDACTED], dated September 1, 1999, stating that he had accompanied the applicant to the Legalization Office in New York to submit an amnesty application, however the application was not accepted because the applicant had visited Bangladesh in 1982. However, [REDACTED] does not date his acquaintance with the applicant, and does not state whether the applicant has been a continuous resident since January 1, 1982.

In addition, the applicant submitted a letter from [REDACTED] of the Islamic Council of North America Inc., located at [REDACTED] stating that he has known the applicant since 1982, and while he was [REDACTED] from 1982 – 1986, he used to see the applicant attending Friday prayers and Islamic holidays. [REDACTED] however, does not indicate when in 1982 he first became acquainted with the applicant and whether he has been a continuous resident ever since.

Although the applicant has submitted three letters and an affidavit, contrary to counsel's assertion, in an attempt to establish his continuous residence, the applicant has submitted questionable documentation. The record reflects that the applicant submitted leases for the years from January 1980 through January 1985 which were written on paper published in 1987 by [REDACTED]. The applicant's attorney stated that the applicant had been a tenant from 1980 – 1985 without a lease, and in 1987 he signed a lease after a friend advised him to sign one. Counsel, however, does not provide any documentation, such as rent receipts, in support of his assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In addition, although the applicant testified that he had entered the United States in 1980 with a B-2 nonimmigrant visa, departed the United States in May 1982 and returned with the same nonimmigrant visa in May 1982, and he stated in his Affidavit for Determination of Class Membership League of United Latin American Citizens v. INS (LULAC), signed on July 16, 1991, that he had last entered the United States on May 31, 1982 with a visitor's visa, counsel now claims that the contradictory statements at the applicant's interview on March 10, 2004 were a result of his inability to communicate properly in English. These unresolved discrepancies cast further doubt on whether the applicant's claim that he entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. 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). Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be

concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. Although not required, none of the affiants or the letter writers included any supporting documentation of the affiant's presence in the United States during the requisite period, and none of them indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. 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.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.