U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

L2

FILE: [redacted] Office: NEW YORK Date: JUL 30 2008
[redacted - consolidated herein]
MSC 01 335 60778

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, 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 failed to establish that he resided in a continuous unlawful status from prior to January 1, 1982, through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant submits a brief.

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 states 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 petitioner 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 petitioner 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 or petition.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the member ship period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

On October 12, 1990, the applicant filed a Form I-687, Application for Status as a Temporary Resident. In connection with that application, the applicant claimed to have initially entered the United States without inspection in February 1980, and to have been absent from the United States on only two occasions for family visits to India – from January to February 1983 (having re-entered "with a visa"), and from July to August 1987 (having re-entered again without inspection). On the Form I-687, the applicant also indicated that he had never used any other name and had no other record with Citizenship and Immigration Services (CIS), formerly the Immigration and Naturalization Service (INS).

However, a review of the record reveals that on April 23, 1990, the applicant was apprehended by Border Patrol Agents at a Greyhound bus depot in Bellingham, Washington. At that time, the applicant claimed that his name was [redacted] **stated that he had no claim to legal status in the United** States, and admitted to havin entered the United States without inspection (consolidated alien registration file number relates). The applicant was released from custody on a $3,500 bond. On May 31, 1990, an Immigration Judge (IJ) in Seattle, Washington, ordered the applicant, *in absentia*, deported from the United States to India. The applicant failed to surrender for his scheduled deportation. A subsequent motion to reopen the decision of the IJ was denied and an appeal from that decision was dismissed by the Board of Immigration Appeals (BIA) on December 1, 2005.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, on August 31, 2001.

On April 25, 2005, the applicant signed a statement attesting to the facts of an interview with Federal and New York Police Department agents. During that interview, the applicant stated that he had come to the United States in 1982 with a valid visa, and that he had only left the country in 1993, 1996, and 1998 – when he was granted advance parole to depart and re-enter. He also stated that he had never used any other name, that he had been arrested once – "in January on the sixth," and had never been arrested any other time. The reasons for this arrest are not contained in the applicant's signed statement.

On October 7, 2005, the district director mailed the applicant a Notice of Intent to Deny (NOID) the application, and afforded the applicant 30 days in which to provide a response. The district director noted that the applicant had submitted no documentation in support of his application and had provided inconsistent testimony. In response, the applicant provided the following:

1. An un-notarized letter, dated October 16, 1990, from [redacted], stating she was willing to testify that she had known the applicant since 1981. [redacted] does not state with any detail how she first met the applicant, what her relationship with the applicant was, or how frequently and under what circumstances she saw the applicant during the requisite period. The affidavit is completely devoid of any details that would lend credibility to her claimed relationship with the applicant and provides no basis for concluding that she actually had direct and personal knowledge of the events and circumstances of the applicant's residence in the US during the requisite period.

2. An undated "affidavit," from [redacted] identified as a cashier at [redacted] in Jamaica, New York, stating that he had known the applicant since 1985. The affidavit is not notarized and does not qualify as a "church attestation" in that it does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). Furthermore, [redacted] makes no claim of having any knowledge of the applicant's entry and presence in the United States prior to an unspecified date in 1985.

3. A letter, notarized on January 9, 2001, from [redacted] stating that she had known the applicant since 1983 when he worked for her at [redacted] Restaurant as a kitchen helper. The letter does not qualify as an "employment letter" in that it does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Furthermore, Ms. [redacted] makes no claim of having any knowledge of the applicant's entry and presence in the United States prior to 1983.

In a Notice of Decision (NOD), dated July 24, 2006, the district director denied the application after determining that the applicant had failed to establish his eligibility for adjustment of status to permanent resident under the LIFE Act.

On appeal, counsel for the applicant asserts that CIS erroneously denied the application: (1) because the applicant satisfied the statutory threshold level of eligibility by a preponderance of the evidence; (2) CIS violated a statutorily imposed confidentiality requirement; and, (3) by stating that the applicant lied at his interview. Counsel asserts that the applicant was never in removal proceedings; rather, he was in deportation proceedings and candidly stated this.

Counsel's assertions are not persuasive. As previously shown, the record does reflect that the applicant has provided inconsistent testimony regarding the date of his initial entry into the United States, his use of an alias, and his having been placed in CIS proceedings. Furthermore, the documentation submitted by the applicant lacks detail.

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).

The AAO finds that upon an examination of the record and each piece of documentation provided for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown 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 since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

Thus, 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.