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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CHICAGO Date: JUN 0 2 2008

MSC 02 246 62005

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.

for Michael T. Kelly
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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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 for the requisite statutory time period.

On appeal, counsel for the applicant asserts that the director failed to consider the affidavit of [redacted] and that such failure led to an unfair, unjust, and faulty conclusion regarding the applicant's eligibility for the LIFE program.

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 (NOID), dated April 18, 2005, the director acknowledged three letters submitted on the applicant's behalf, but noted that the letters were insufficient to establish that the applicant entered the United States prior to January 1, 1982 and continued to reside in the United States in an unlawful status through May 4, 1988. The three letters included the following information:

- A May 27, 2002 letter authored by [redacted] of New York, New York who writes that she is a friend of the applicant's family in Peru and that in December of 1981 she received a call from the applicant who was in Miami and invited the applicant to her house for Christmas. [redacted] indicated that the applicant traveled back forth between Miami and New York and would come to New York during the summer and at Christmas time. The letter writer indicates the applicant was able to get a room in Flushing, New York in 1986.

- A May 28, 2002 letter authored by [redacted] of New York, New York who writes that he met the applicant in Central Park in the summer of 1984 where he would run. Mr. [redacted] indicates that the applicant would travel back and forth between Miami and New York and in 1986 the applicant got a room in Flushing, New York.

- A May 28, 2002 letter authored by of Bayside, New York who writes that she met the applicant in Kissena Park in Flushing, New York in October 1987 where the applicant used to run.

The record also contains a Form I-687, Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, submitted in December 1989. On the Form I-687, the applicant lists his addresses as: [redacted], Miami, Florida from December 1981 to December 1984; [redacted] Miami, Florida from January 1985 to March 1987; and [redacted], Miami, Florida from April 1987 to the date of filing the application.

The Form I-687 also lists the applicant's employment as a salesman with the following employers: "Animal Word" from December 1982 to February 1984; "Fish Collection" from March 1984 to December 1986; and Pet Food & Supplies from January 1987 to the date of filing the application. The locations of "Fish Collection" and Pet Food & Supplies are in Florida; there is no address listed for "Animal Word."

In response to the director's April 18, 2005 NOID, counsel provided assorted documentation evidencing the applicant's physical presence in the United States during 1987 and 1988 and five statements from U.S. citizens regarding their relationship with the applicant from prior to 1982 through 1988 and beyond. The AAO has reviewed a printout from the social security administration indicating that the applicant began work in the United States in 1987 and a credit report printout generated in January 1998 that states the applicant has been in the credit bureau files since February 1985. The credit report indicates the applicant's former addresses are in New York. The AAO accepts the information submitted establishing the applicant's physical presence in the United States in 1987 and 1988 and the credit report's statement that the applicant has been in its files since February 1985. The AAO now reviews the five statements provided to establish the applicant's presence from prior to January 1, 1982 through 1988, as well as the [redacted] and [redacted] letters submitted prior to the director's NOID. The five statements are identified as follows:

- An undated letter from [redacted] that contains a notary stamp but does not include the jurat indicating that the author of the letter appeared before the notary, was identified by the notary, and signed the letter before the notary. The letter writer indicates he lives in Coral Springs, Florida, knew the applicant's father through business, and first met the applicant in December of 1981 when the applicant stayed with him for a week. The letter writer indicates further that he saw the applicant several times during 1982, 1983, 1984, and 1985 when he would provide the applicant with money, gifts, and letters sent to the applicant by the applicant's family in Peru. The letter writer states further that the applicant stayed with him in February and March of 1983, 1984, and 1985. The letter writer indicates that he saw the applicant again in 1986 in Flushing, New York where the applicant lived with his older brother.

- A May 13, 2005 affidavit signed by [redacted] of East Hampton, New York, who declares that the applicant performed landscaping jobs for him in the summers of 1985, 1986 and in the beginning of the summer of 1987 and in 1988 on an as needed basis. Mr. [redacted] does not indicate where the applicant lived at the time the applicant performed the landscaping jobs.

- A May 16, 2005 letter signed by [redacted] who declares that he met the applicant when he lived in New York in 1986 through the applicant's brother.

- A May 6, 2005 affidavit signed by [redacted] who declares that the applicant performed landscaping work for him in the summers of June, July and August of 1985, 1986, 1987 and May and June of 1987 and 1988. Mr. [redacted] also declares that the applicant stayed with him in New York while performing these duties. Mr. [redacted] indicates he believes the applicant traveled from Miami to New York City during the summers and around 1986 the applicant finally moved to Flushing in Queens New York to stay with his brother.

- A May 6, 2005 letter written by [redacted], owner of [redacted] who writes that the applicant worked for him as a catering waiter several times in the fall and winter from 1986 through 1988.

The information contained in the [redacted] and [redacted] letters is insufficient to establish that the applicant entered the United States prior to January 1, 1982 in an unlawful status and continued to reside in the United States in an unlawful status through 1986. Neither the [redacted] letter nor the [redacted] letter provides substantive information of the events and circumstances surrounding the initial relationship and subsequent interaction between the affiants and the applicant. For example, [redacted] does not provide any information regarding how the applicant entered the United States, where the applicant went after staying with the affiant for a week, or other details that would help substantiate that the applicant actually resided in the United States during this time period. Intermittent contact and general statements are insufficient when attempting to document an applicant's residence. The AAO has reviewed the limited information in the affidavit and notes that [redacted] indicates that the applicant stayed with him in February and March of 1983, 1984, and 1985 but does not provide any documentary evidence that would assist in establishing this relationship. Likewise, the letter from [redacted] lacks detail of the applicant's entrance into the United States, the whereabouts of the applicant after he stayed with her at Christmas time in 1981, and detailed information regarding the interaction between the affiant and the applicant. The AAO does not find these affidavits probative as these affidavits do not contain sufficient corroborating detail of the ongoing relationship and interaction of the affiants and the applicant. Similarly, the [redacted] letter provides general information and does not provide the detail necessary to substantiate how the letter writer knows he met the applicant in 1984 and knows the applicant traveled back and forth between New York and Miami.

As noted above, the AAO accepts that the applicant resided in the United States in 1987 and 1988. The AAO also finds the applicant's credit report coupled with letters and affidavits indicative of the applicant's presence in the United States since sometime in 1985 and in 1986. The AAO notes, however, that the credit report and the information submitted in support of the Form I-485 regarding the applicant's addresses during the 1986 through 1988 time period conflicts with the applicant's information regarding his location as provided in support of the Form I-687. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 beginning prior to January 1, 1982, through May 4, 1988. The applicant has submitted deficient affidavits and letters and inconsistent evidence regarding his residence; thus without contemporaneous, credible evidence of the applicant's residence in the United States prior to January 1, 1982 to 1985, the applicant has not established eligibility for this benefit. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the submission of inconsistent evidence 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, to 1985.

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 to 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.