U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: HOUSTON Date: MAY 22 2008

MSC 02 246 62318

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. 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.

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, Houston, 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 had continuously resided in the United States in an unlawful status from since before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the applicant "was unable to return from his trip abroad because his mother was seriously ill." Counsel contends that applicant was unable to return because the health of the applicant's mother was deteriorating.

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.

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

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 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.

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 issue in this proceeding is whether the applicant has established continuous unlawful residence in the United States since before January 1, 1982, through May 4, 1988.

In the April 10, 2006, Notice of Intent to Deny (NOID), the director stated that the applicant was interviewed on August 12, 2003. The director noted that the applicant stated he was absent from the United States in 1987 for over one year. The director stated that the applicant's absence exceeded the forty-five days permitted. The director also stated the applicant failed to establish an emergent reason that prevented his timely return to the United States. The director granted the applicant thirty (30) days to submit any evidence to overcome the above reason for denial. The record indicates that the applicant failed to respond. In the June 28, 2006, Notice of Decision (NOD), the director denied the instant applicant based on the reasons stated in the NOID.

The record contains a Form I-648, Memorandum Record of Interview made in Examinations Section, signed by the applicant on August 12, 2003. The Form I-648 indicates that, during the interview, the applicant stated that he departed the United States for India in September 1987 to get married and returned to the United States in May 1989. This was an absence of over 579 days. This single absence exceeded the forty-five (45) days, and the aggregate of all absences of one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, permitted under the regulations at 8 C.F.R. § 245a.15(c)(1). There is no evidence in the record to establish that emergent reasons prevented the applicant from returning to the United States within the time period allowed.

On appeal, counsel asserts that the applicant "was unable to return from his trip abroad because his mother was seriously ill." Counsel contends that applicant was unable to return because the health of the applicant's mother was deteriorating. 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). The record does not contain any documentary evidence to support counsel's assertion.

It is also noted that the record contains a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act signed by the applicant on April

13, 1990. In his Form I-687, Question #35, where asked to list his absences from the United States since his entry, the applicant listed one absence from December 1987 to July 1988 to Canada to visit a sick uncle. The applicant's Form I-687 statement is inconsistent with counsel's assertion on appeal because the applicant did not mention anything about a trip to India or his mother's deteriorating health condition. The applicant's Form I-687 statement is also inconsistent with his Form I-648 statement, which stated he went to India in September 1987 to get married.

The record also contains a Form for Determination of Class Membership in *CSS v. Meese*, signed by the applicant. The applicant stated that he last departed the United States in December 1987 to Canada and returned to the United States in January 1988. The applicant's statement is also inconsistent with counsel's assertion and the applicant's Form I-648 statement.

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). There is nothing in the record to reconcile the above discrepancies. Neither counsel nor the applicant submitted any independent objective evidence to reconcile the above discrepancies.

Anytime an application includes serious discrepancies, and the applicant fails to resolve those discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. Here, the applicant failed to resolve the inconsistencies in his own statements. These discrepancies cast serious doubt on the credibility of his claim. Given the applicant's inconsistent statements, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Based on the above discussion, the applicant has failed to establish continuous residence in an unlawful status in the United States since 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