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

[redacted]

FILE: [redacted] Office: NEW YORK Date: MAY 23 2008

MSC 01 327 60470

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 denied the application because the applicant failed to demonstrate that he had continuously resided in the United States in an unlawful status from prior to January 1, 1982, through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement.

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.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit as evidence in support of his or her application. While affidavits may be accepted as "other relevant documentation" [*See* 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's unlawful continuous residence during the requisite time period.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, on August 23, 2001. In an attempt to establish his continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant, through counsel, provided the following documentation:

1. A notarized letter, dated November 21, 1990, from [redacted] Brooklyn, New York, stating that the he knows the applicant resided at [redacted] Richmond Hill (Queens), New York, from 1981 to 1986; at [redacted] Brooklyn, New York (the address given by [redacted] as his address), from 1986 to June 1990; and, that from July 1990 to August 1990, the applicant returned to the previously noted address in Richmond Hill, New York.
2. **A notarized letter, dated August 12, 2001, from** [redacted] of South Ozone Park, New York, stating that she has known the applicant since 1981, and that he has been residing in the United States since that time.
3. A notarized declaration, dated January 19, 2004, from [redacted] of Stroudsburg, Pennsylvania, stating that she has known the applicant since May 1981, and that they first met in New York through her cousin [redacted] who was engaged to the applicant. Ms. [redacted] attests that the applicant moved to Brooklyn, New York, in April 1986, where he lived until June 1990, and that he came to her wedding in Richmond Hill, New York, in November 1986. She further states that the applicant departed the United States from June to July 1987 to visit her cousin [redacted] in Trindad, indicating that she knows of this departure because "of their marriage."

Counsel also provided:

4. A notarized letter, dated August 12, 2001, from [redacted] of Richmond Hill, New York, stating that she has known [redacted] since 1985, and that she ([redacted]) has been residing in the United States "from that time."

In a Notice of Intent to Deny (NOID), dated September 7, 2005, the district director determined that the applicant had failed to submit credible evidence in support of his application, that the evidence submitted was contradictory, and that the veracity of the applicant's testimony at an interview on June 16, 2004, was questionable. The director specifically noted:

- With regard to No. 1, above, had failed to provide his telephone number and attempts to obtain a listing for him at the address given were unsuccessful.
- With regard to No. 2, the affidavit lacks credibility in that [redacted] did not explain how she met and knows the applicant.
- With regard to Nos. 1 and 4, the affidavit from stated she had known the applicant since 1981 and met him through her cousin, [redacted], to whom the applicant was engaged; [redacted] had not completed section five (5) of her affidavit, asking for information concerning the affiant's and applicant's residences at the time the applicant first entered the United States; the earliest residence of the applicant's to which she attested began in April 1986; and that [redacted] stated that [redacted] did not enter the United States until 1985, therefore it was not possible that [redacted] knew the applicant since 1981.
- The applicant claimed on a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Act), submitted on November 26, 1990, that he had departed the United States in June 1987 for a family visit; however, at an interview on June 16, 2004, he stated that the reason for the trip was to get married. The director further noted that although the applicant claims to have entered the United States as a nonimmigrant visitor in November 1981, Citizenship and Immigration Services (CIS) records show no such entry was made. Additionally, a nonimmigrant entry is normally valid for six months, and therefore, if the applicant's claimed date and manner of entry were true, he would have been in valid non-immigrant status as of January 1, 1982.

The applicant was provided 30 days in which to submit additional evidence that he wished to have considered in making a decision in his case. Counsel for the applicant responded with a letter dated October 6, 2004, stating that because of presumptions and assumptions made by the interviewing officer, the NOID was without concrete detail as to why the applicant's evidence was not sufficient or credible. Counsel specifically noted:

- It is not unusual that CIS may not have information regarding the applicant's November 1981 entry.
- Although the applicant's visa may have been valid for 6 months, his stay was authorized for 30 days, therefore, he was in unlawful status as of January 1, 1982.
- Originally, the applicant applied for and obtained a nonimmigrant visa for the sole purpose of entering the United States to reside permanently – not to simply visit.
- The applicant violated his status when he obtained a job and proceeded to work without proper permission.
- There is no confusion regarding the purpose of the applicant's departure to Trinidad in 1987, because he did go for a family visit during which family events took place, including his marriage.

Counsel also quoted a February 13, 1989, CIS (formerly the Immigration and Naturalization Service, INS) memorandum from the Director, Eastern Regional Processing Facility (now the Vermont Service Center), regarding "Documentary Evidence for Legalization Applications (Form I-687)," which states that "...In those applications where the only documentation submitted is affidavits, if the affidavits are credible and verifiable, are sufficient to establish the facts at issue and there is no adverse information, the application shall be approved..." Counsel, however, did not address the issues noted by the district director regarding Service's inability to contact [redacted] the lack of credibility of [redacted]s affidavit, or the contradictions noted in the affidavits of [redacted] and [redacted]

In a Notice of Decision (NOD), dated June 23, 2006, the district director denied the application based on the reasons stated in the NOID.

On appeal, counsel for the applicant again cites the aforementioned February 13, 1989, memorandum. Counsel submits no additional documentation or argument in support of the appeal.

The issue in this proceeding is whether the applicant has established that he continuously resided in the United States in unlawful status from prior to January 1, 1982, through May 4, 1988.

Although the applicant has submitted affidavits in support of his application, he has not provided any contemporaneous documents provided for in 8 C.F.R. § 245a.2(d)(3) as evidence of his residence in the United States during the requisite time period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

While not required, none of the affidavits provided by the applicant are accompanied by proof of affiant's identification or any evidence that the persons making the statements actually resided in the United States during the relevant period. As previously indicated, [redacted] could not be contacted to verify his statement, and the affidavit from [redacted] lacks any details that would lend credibility to her claimed relationships with the applicant. Furthermore, the contradictions noted regarding Nos. 3 and 4 have not been addressed. It is also noted by the AAO that the affidavit from [redacted] appears to have been altered with regard to the 1981 date from which the affiant claims to have known the applicant (the "81" is written in over white-out).

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

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, through December 31, 1987.

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).

Given the insufficiencies and discrepancies in the evidence, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, 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). 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.