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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: NOV 04 2008

MSC 02 176 63651

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.

for 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 Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserted that he "submitted support evidence to proof the presence from 1981 to 1988." The applicant requested an extension of 30 days in which to supplement the appeal. In response, the applicant submitted an additional affidavit from an affiant, who claimed to have met the applicant in 1981 on a train.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

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.

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. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- A notarized affidavit from of Bronx, New York, who indicated that he has known the applicant since October 1981 and attested to the applicant's moral character.
- A letter dated November 28, 1990, from [redacted], public information for Masjid Malcolm Shabazz in New York, New York, who indicated the applicant has been a member since April 1982, and attended Friday Jumah prayer services as well as other prayer services at the Masjid.
- Two rent receipts dated October 7 and 14, 1981 from [redacted] in New York, New York.
- Notarized affidavits from [redacted] and [redacted] of New York, New York, who attested to the applicant's residence in New York City since November 1981. Mr. [redacted] asserted that he first met the applicant in a restaurant he frequented for lunch. Mr. [redacted] asserted that he met the applicant while riding on a bus in 1981.
- A notarized affidavit from [redacted] of New York, New York, who indicated that the applicant resided with him at [redacted] of the Americas from April 1984 to April 1986. The affiant asserted that the rent receipts and household bills were in his name.
- A letter dated November 21, 1990, indicating the applicant was employed at Key Food in New York, New York as a stock boy from October 1981 to June 1985. It is noted that the name of the individual who signed the letter is indecipherable.
- A letter dated November 27, 1990, from [redacted] of Atlantic Learning Systems, Inc. in Brooklyn, New York, who indicated that the applicant attended its facility from September 12, 1982 to March 26, 1983, April 20, 1983 to October 15, 1982 and from November 10, 1983 to May 18, 1984. The affiant asserted that during his attendance, the applicant resided at [redacted], New York, New York.
- Affidavits from [redacted] and [redacted] of Bronx, New York, who indicated that they witnessed the applicant boarding a ship at Port Elizabeth, New Jersey en route to Gambia on September 18, 1987.
- A notarized affidavit from [redacted] of Brooklyn, New York, who indicated that she became acquainted with the applicant in 1981 at a friend's party and has remained friends with the applicant since that time.

On May 18, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification as no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was further advised that: 1) the rent receipts from [redacted] contain an indecipherable signature, and failed to list a telephone contact number and the identification of the lessor; 2) attempts to contact Atlantic Learning Systems, Inc. were unsuccessful and the telephone directory assistance had no listing for the above address; and 3) on May 8, 2007, the Service contacted the mosque and was informed that [redacted] has not been at the mosque for over ten years and there was no way to verify the information in the affidavit. As no corroborative evidence from Masjid Malcolm Shabazz was provided, the director concluded that the letter was fraudulent.

The applicant, in response, submitted affidavits from _____ of Bronx, New York and [redacted] of New York, New York, who attested to the applicant's residence at [redacted] Bronx, New York from June 1985 to September 1987 and August 1985 to September 1987, respectively. Ms. [redacted] asserted that she and the applicant rode the same train most of the time and have maintained a friendship since that time. Mr. [redacted] asserted that he and the applicant meet on Fridays at the Mosque located at 116th Street, New York, New York.

On appeal, the applicant submits an additional affidavit from [redacted] who reasserts the veracity of her initial affidavit. The affiant attests to the applicant's moral character. The applicant also submits a copy of his social security statement which reflects his earnings since 1991.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals *may be considered as evidence of continuous residence. See Matter of E-- M--, supra.* In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--, supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. The applicant has not addressed the director's findings regarding the rent receipts from [redacted], and the letters from [redacted] and Atlantic Learning Systems., Inc.

2. [redacted], in his letter, attested to the applicant residing at [redacted] while in attendance at Atlantic Learning Systems, Inc. The applicant, however, did not claim residence at this address on his Form I-687 application.

3. [redacted] and [redacted] all attest to have known the applicant since 1981, but failed to state the applicant's place of residence, provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence during the requisite period seriously detracts from the credibility of her claim

4. The employment letter from Key Food failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the letter also failed to 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.

5. [redacted] indicated that the applicant resided with him from April 1984 to April 1986 at [redacted] of the Americas. However, [redacted] and [redacted] indicated that

the applicant resided at Bronx, New York during a portion of the time [redacted] claimed the applicant was residing with him.

6. The applicant claimed on his Form I-687 application to have resided at [redacted] from October 1981 to April 1984. Except for the two rent receipts that have been discredited, the applicant has not provided any credible evidence to support this claim.

7. The applicant claimed on his Form I-687 application that he has been self-employed since June 1985. The applicant, however, provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F R. § 245a.2(d)(3)(i).

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

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 credibility issues arising from the documentation provided by the applicant, it is determined 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 from before January 1, 1982 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, the applicant 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.