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

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[redacted]

FILE: [redacted] Office: NEW YORK Date: OCT 0 8 2008

MSC 02 236 62711

[redacted]

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, counsel argues that the applicant did not make a material misrepresentation and had presented evidence of his residence in the United States prior to January 1, 1982.

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 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 only provided the following evidence:

- An affidavit indicating that he first entered the United States without inspection on December 3, 1981, departed the United States on September 15, 1982 and entered the United States on October 20. 1982 with a nonimmigrant visa.
- A three-year lease agreement entered into on January 1, 1982 between the applicant and [redacted] for an apartment at [redacted], Woodside, New York. The lease agreement has a handwritten notation indicating that the lease was renewed in January 1985 for two years through December 1987.
- A photocopy of the three-year lease agreement entered into on January 1, 1982. It is noted that the years 1986 and 1988 were handwritten over the years 1982 and 1985, respectively.
- A notarized affidavit from [redacted] of Woodside, New York, who attested to the applicant's residence at [redacted] from January 1, 1986 to January 1, 1988.
- A statement from a representative of the United States Post Office indicating that the applicant has rented a post office box in Jackson Heights, New York since 1985.

On March 27, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the information indicated on the lease agreements was fraudulent as the agreements were copyrighted in December 1987. The director determined that the information indicated on the lease agreements was written in at a later date in an attempt to meet the residence requirements.

The applicant, in response, asserted, in pertinent part:

> As I was a tenant of [redacted] at [redacted] Woodside, NY, from Jan. 1982 until Jan. 1985, I went to [redacted] seeking proof of residency. He knew that I was a tenant then but he had no records showing that. He and I agreed that he would make a lease confirming my tenancy. Hence, he used a Blumberg lease with a form date of 12/87 and made the lease reflecting the period that I was a tenant.

The applicant submitted:

- A notarized affidavit from a brother-in-law, [redacted], who indicated that he met the applicant in 1981 in Queens, New York at a cultural function and family gathering.
- A notarized affidavit from a distant relative, [redacted] of Orangeburg, New York, who indicated that he met the applicant at a social function in June 1981 and has continued his acquaintance with the applicant over the years.
- A notarized affidavit from [redacted] of Flushing, New York, who indicated that he met the applicant in 1982 at Patel Brothers Indian Grocery in Jackson Heights, New York, and has continued his acquaintance with the applicant over the years through dining, socializing and worshipping together.
- A notarized affidavit from an uncle, [redacted], of Copiague, New York, who indicated that he shared an apartment with the applicant at [redacted] in 1984.

The director, in denying the application, determined that the affidavits submitted in response to the Notice of Intent to Deny failed to show specific personal knowledge of the applicant's whereabouts during the period in question. The director noted, in pertinent part:

> The affidavit must demonstrate proof that the affiant has direct personal knowledge of the events and circumstances of your residency. Credible affidavits are those which include some

documents identifying the affiant, some proof the affiant was in the United States during the statutory period, some proof that there was a relationship between you and the affiant such as photos, etc.

None of the affidavits you submitted meets the aforementioned criteria. Since you did not adequately explain the fabricated corroborating evidence you submitted in this case and the affidavits are not credible service has no reason to reconsider the intent to deny.

On appeal, counsel asserts that the applicant knew the affiants when he first came to the United States "since early 1981." Counsel asserts that the affidavits submitted met the criteria stated and that they are *prima facie* evidence of the applicant's residence. Counsel asserts, in pertinent part:

[The applicant] filed his application and his initial documentation without legal assistance. He made a major mistake when he asked his former landlord to sign a lease confirming his tenancy on January 1. 1982. It can be explained as the easiest way to get a former landlord to acknowledge one's tenancy. The decision faults [the applicant] for not attempting to get a statement or affidavit from his former landlord. The failure to obtain such a statement was not due to a lack of effort on [the applicant's] part. The undersigned attempted to obtain such a statement but was not able to get past the landlord's wife.

* * *

The decision denying [the applicant'] application noted that he had failed to obtain a statement from the landlord confirming his tenancy on January 31, 1982. I hereby confirm that I attempted to obtain such a statement. I wrote a letter to [redacted] dated April 17, 2006. I subsequently called [redacted]'s house. My call was answered by [redacted]. Mrs. [redacted], refused to let me speak to [redacted]. She stated that she and her husband were both in their 80's and that her husband was too old to be bothered by this kind of request. I spent perhaps 30 minutes talking with [redacted] but she was adamant. She did not deny the tenancy and confirmed renting to many immigrants but she refused to let me present a proposed statement to her husband or even to speak with him.

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 counsel 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. Specifically:

[redacted] merely indicated that he met the applicant at a cultural function in 1981, but makes no attestation to the applicant's place of residence in the United States, and does not provide any details regarding the nature of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.

and [redacted] claimed to have been acquainted with the applicant since 1981 and 1982, respectively but make no attestation to the applicant's place of residence in the United States. Furthermore, [redacted] does not provide any details regarding the basis for his continuing awareness of the applicant's residence. asserts that he shared an apartment with the applicant at [redacted] however, the applicant provided no evidence to support the affiant's assertion.

The applicant claimed on his Form I-687 application to have resided at from December 3, 1981 to January 1, 1989. However, no credible evidence has been submitted to establish that the applicant was residing at this address in 1981. The lease agreements, which have been discredited, were dated subsequent to 1981. Further, in his affidavit, submitted in response to the Notice of Intent to Deny, the applicant indicated that he was a tenant of [redacted] from "Jan. 1982 until Jan. 1985." No statement as been presented to explain these contradicting statements.

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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record reflects that the applicant has a prior immigration file, [redacted], which contains documentation that refutes the applicant's claim to have resided in the United States prior to October 20, 1983. Specifically, a Report of Investigation dated October 27, 1983, reflects that on October 20, 1983, the applicant was apprehended by the Florida Marine Patrol after he and several other individuals were smuggled from Bimini to Dinner Key, Miami, Florida by boat. The alien's passport showed extensive travel in East Germany, Poland, Russia and Cuba before he arrived in Jamaica on October 16, 1983.

On his Form I-589, Application for Asylum and for Withholding of Deportation[1], the applicant indicated the following:

1. Prior to his arrival in the United States on October 20, 1983, he was residing in Berlin, West Germany for three years and three months as an asylum applicant. The fact that the applicant failed to disclose this October 20, 1983 entry into the United States is a strong indication that the applicant was not in the United States prior to this date.
2. His twin daughters were born in West Germany on February 8, 1983. It is noted that on his Forms I-687 and I-485 applications, the applicant listed the dates of birth of his twin daughters as July 19, 1981.
3. The applicant indicated that he had no relatives residing in the United States. However, as previously noted, [redacted] and [redacted] who claimed to be a relative of the applicant in their affidavits, attested to have been residing in the United States during this period.
4. His distant relative [redacted], was residing in the United Arab Emirates. As previously noted, [redacted], in his affidavit, claimed to have met the applicant at a social religious function in the United States in June 1981.

On July 10, 1984, a delivery bond was posted on behalf of the applicant and an address for the applicant was provided while his asylum application and deportation proceedings were pending. This address does not coincide with the address listed on the questionable lease agreement submitted by the applicant with his LIFE application.

These factors establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States since prior to January 1, 1982 through October 19, 1983. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.

[1] On June 1, 1984, the immigration judge denied the applicant's asylum application and withholding of deportation. The alien subsequently filed an appeal, which was dismissed by Board of Immigration Appeals on February 1, 1985.