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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: OCT 31 2008

MSC 02 145 61694

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

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the applicant is eligible for LIFE Act legalization. Counsel does not submit additional evidence on appeal.

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 13, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted affidavits from [redacted], and [redacted], that were not credible nor amenable to verification. The director also noted that the applicant failed to disclose on his Form I-485 that he had two daughters, and determined, therefore, that the applicant's claim was questionable. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated May 25, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID but failed to overcome the reasons for denial stated in the NOID. It is noted that in his response to the NOID counsel states that his office inadvertently failed to include the applicant's children in the Form I-485, but, that the children were included in the Form I-687.

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. The applicant submitted employment letters, affidavits, a receipt, and a mail envelope as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted letters of employment from:

1) [redacted], of New Image Signs and Awnings, located at [redacted], Bronx, New York, dated September 19, 1989. Mr. [redacted] states the applicant had been employed from May 14, 1981 to September 15, 1986 as a sign installer.

2) [redacted], of Painting, located at [redacted], Flushing, New York, dated October 20, 1989. Mr. [redacted] states that the applicant worked with him painting, plastering, and wallpapering, from January 1987

It is noted however, that the letters failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

Affidavits and letters

The applicant submitted the following:

1) A notarized letter from [redacted], sworn to on December 4, 1989, stating that the applicant resided with him at an apartment located at [redacted], Flushing, New York, from 1986 to 1988. The affiant also states that the applicant paid rent weekly, but he does not specify the amount. It is noted that the affiant does not specify when in 1986 the claimed residence began, or when it ended in 1988. This letter, therefore, is not probative.

2) An affidavit from [redacted], dated September 28, 1989. The affiant states that she has known the applicant to have resided in the United States since January 1981. The affiant also states that she has known the applicant through her personal acquaintance. However, she does not indicate how she dates her acquaintance with the applicant, and whether and how she maintained contact with the applicant during this period.

3) An affidavit from [redacted], dated October 18, 1989. Mr. [redacted] states that he has known the applicant to have resided in Flushing, New York, since January 1981. The affiant also states that the applicant painted his apartment several times and lives in the building where he works. However, the affiant does not indicate how he dates his acquaintance with the applicant, and whether and how he maintained contact with the applicant during this period.

4) An affidavit from [redacted], dated October 18, 1989. Ms. [redacted] states that she has known the applicant to have resided in Flushing, New York, since February 1981. The affiant also states that she has known the applicant as an acquaintance and a tenant at the building where she lives. However, she does not indicate how she dates her acquaintance with the applicant, and whether and how she maintained contact with the applicant during this period.

In addition, the applicant submitted a copy of a money order receipt, dated September 17, 1983; and, a mail envelop addressed to the applicant at [redacted], Dover, NJ 07801, which bears a Colombia postmark, dated June 16, 1987.

The applicant has provided two letters of employment, four affidavits, a money receipt, and a mail envelope in an attempt to establish his claimed residence in the United States from prior to January 1, 1982. However, as noted above, the letters and affidavits are not sufficiently detailed, and are therefore, not probative. Neither the copy of the money receipt which is dated in 1983, nor the envelope, which is dated in 1987, establish the requisite continuous residence.

The applicant's claim that he has resided continuously in the United States since prior to January 1, 1982 is questionable. The applicant indicates on his Form I-687 that since his entry in January 1981 he has had one absence from the United States, from February 1988 to March 1988. The record,

however, reflects that the applicant has a child who was born in Colombia in August 1984. The applicant has failed to provide any explanation as to how he fathered a child who was born in Colombia in 1984 while he was in the United States, as he claims.

This discrepancy casts doubt on whether the applicant's claim that he first entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

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 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.