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

L2

FILE: [redacted] Office: GARDEN CITY Date: OCT 31 2008

MSC 02 193 62329

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, Garden City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate 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, the applicant asserts that the evidence he submitted in support of his application is genuine. He contends that the affidavits submitted are not fraudulent, but rather that the affiants are no longer working at the institutions or the organization went out of business. In addition, he asserts that the aggregate of his absences from the United States did not exceed 10 months.

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.

Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." The applicant has not submitted any evidence to establish that an emergent reason delayed her return to the United States.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the **LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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.* at 80. 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant's claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

On April 11, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). In connection with his application, the applicant was interviewed on March 15, 2004. At his interview, the applicant stated that he first entered the United States from Canada without inspection in December 1981.

In support of his claim of continuous residence, the record contains the following evidence relevant to the statutory period:

1. A declaration, dated June 28, 1990, from who stated that the applicant is a member of the Muslim Community and has been here since December 1981. By regulation, letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Here, the affiant has failed to state the applicant's place of residence during the membership period or to establish the origin of the information being attested to. It is also noted that when contacted by the director, the organization had no way of verifying the information contained in this affidavit. The director was informed that the affiant had not been at the mosque for over 10 years. Lacking relevant details and its unverifiable nature, this affidavit can be given no weight as evidence of the applicant's residence in the United States during the requisite period.

2. A declaration with an illegible signature, dated August 15, 1990. The declarant states that the applicant resided at [redacted], located at [redacted] in New York, from December 1981 until February 1988. It is noted that the director attempted to verify the contents of the declaration and was unable to do so as the hotel was no longer in business. The declaration fails to provide any information that would indicate personal knowledge of the applicant's 1981 entry into the United States or the circumstances of his residence at the hotel over the claimed seven years of residence. Lacking relevant details and its unverifiable nature, this affidavit can be given no weight as evidence of the applicant's residence in the United States during the requisite period.

3. A declaration, dated August 22, 1990, from [redacted], who stated that she has known the applicant since 1981, the applicant worked as a street vendor in Manhattan, and she met him at a surprise birthday party in Brooklyn. The affiant failed to provide any information that would indicate personal knowledge of the applicant's 1981 entry into the United States, his places of residence or the circumstances of his residence over the prior eight or nine years of her claimed relationship. Lacking relevant details, this declaration has minimal probative value.

4. Two form affidavits from [redacted] and [redacted], both of whom stated that they have personal knowledge that the applicant resided in the United States from December 1981 to the present. The affiants failed to provide any information that would indicate personal knowledge of the applicant's 1981 entry into the United States or the circumstances of his residence over the prior eight or nine years of their claimed relationships. These affidavits have minimal probative value.

For the reasons noted above, the applicant has failed to establish his claim of continuous, unlawful residence in the United States for the requisite period. The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both

individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period.

It is also noted that during his March 15, 2004, interview, the applicant stated that he made four or five trips out of the United States during the statutory period. He stated that each trip would last two or three months. The applicant's testimony appears to be corroborated by his Form I-485, which lists his children born in the Ivory Coast in 1981, 1983, 1985, 1986, 1987 and 1989. On appeal, the applicant asserts that the aggregate of his absences from the United States did not exceed 10 months. However, by the applicant's own testimony, each individual absence exceeded the 45 days permitted in a single absence from the United States. The applicant has not submitted any evidence to establish that an emergent reason delayed his return to the United States. These absences interrupted his continuous residence in the United States.

Pursuant to 8 C.F.R. § 245a.12(e), 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 lack of credible supporting documentation in the record and the noted absences, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.