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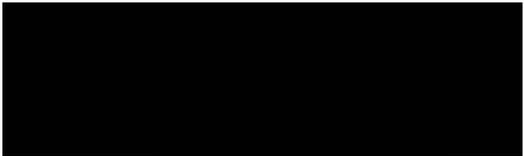
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 180 60694

Office: NEW YORK

Date: **OCT 31 2008**

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:

SELF-REPRESENTED

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, 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 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 he has provided credible and persuasive testimony. He contends that the director's decision is an abuse of discretion.

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 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 March 29, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (Form I-485). In connection with his application, the applicant was interviewed on February 26, 2004. At his interview, the applicant stated that he first entered the United States on March 15, 1981. In support of his claim, the record contains the following evidence relevant to the requisite period:

1. An affidavit, dated April 2, 1990, from [REDACTED] who stated that the applicant left the United States in June 1987. The affiant stated that he has known the applicant since he came to the United States as a religious man and a volunteer member of the community center. The affiant failed to provide details regarding his claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant’s entry into the United States, his places of residence or the circumstances of his residence over the years of their claimed relationship. Although he claims to have known the applicant since his date of entry, he failed to note how, where or when he met the applicant. In addition, the affiant failed to provide his address or contact number. The affidavit is unverifiable and cannot be given any weight as evidence of the applicant’s residence in the United States during the requisite period.
2. An affidavit, dated April 18, 2005, from [REDACTED] who stated that he has personally known the applicant. The affiant stated that from 1981 to 1983 the applicant would visit his restaurant, Red Hot Spot Restaurant, to speak to him on a personal basis. The affiant failed to provide any information that would indicate personal knowledge of the applicant’s entry into the United States, his places of residence or the circumstances of his residence over the 2 years of their claimed relationship. Although he claims to have known

the applicant since his date of entry, he failed to note how or where he first met the applicant. Lacking relevant details, this affidavit has minimal probative value.

3. A declaration from [REDACTED] who stated that he met the applicant in September 1985 at a friend's party. The declarant failed to provide details regarding his claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's entry into the United States, his places of residence or the circumstances of his residence over the years of their claimed relationship. Lacking relevant details, this affidavit has minimal probative value.
4. A declaration from [REDACTED], who stated that the applicant has resided at [REDACTED] Astoria, New York, since 1981. However, the affiant failed to provide any information that would indicate personal knowledge of the applicant's place of residence during the requisite period. In addition, the record contains the applicant's Form I-687, Application for Status as a Temporary Resident, signed by the applicant on March 30, 1990. In his Form I-687, the applicant indicated that he resided at [REDACTED] in Chicago from 1981 to 1984, and at [REDACTED] in Chicago from 1985 to the present. The applicant's testimony is inconsistent with the affiant's declaration. This discrepancy seriously brings into question the credibility of the affiant.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence 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.

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 and the inconsistencies noted in the record, 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.