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: SEP 02 2008

MSC 02 245 60522

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.

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 District Director, 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 for the applicant asserts that the director denied the application based on hearsay evidence, and failed to verify affidavits submitted by the applicant. 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.

On February 21, 2007, the director issued a notice of intent to deny (NOID) informing the applicant of the Service's intent to deny his LIFE Act application because he had failed to establish the requisite continuous residence. The director noted that the applicant failed to submit sufficient credible evidence to support his application. The applicant was granted thirty days to respond to the notice.

In the Notice of Decision, dated March 19, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted the applicant failed to response to the NOID within the allotted time.

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 letters of employment and affidavits as evidence to establish the requisite continuous residence in support of his Form I-485 application. The AAO reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted a letter of employment from [redacted], of G.M. Construction Co., located in Brooklyn, New York. The letter, notarized on November 14, 1990, states that the applicant had been employed as a carpenter helper from July 10, 1981 to May 21, 1985, for a weekly salary of $175.00 for 40 hours. The applicant also submitted a letter of employment from [redacted], of Spices of Asia, Inc., located in Brooklyn, New York. Mr. [redacted]'s letter, notarized on February 11, 1992, states that the applicant had been employed by the company from September 1985 to July 10, 1990. It is noted that [redacted] does not indicate in what capacity the applicant was employed. It is also noted the letters failed to 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

The applicant submitted affidavits from:

1) [redacted], dated February 1, 1991, stating that the applicant resided at [redacted] Brooklyn, New York 11232, from 1981 to 1990. However, [redacted] does not indicate how he dated his acquaintance with the applicant.

2) In addition, the applicant submitted a form affidavit from [redacted], notarized on February 19, 1991. [redacted] states that he has known the applicant as a friend from 1981 to 1989. [redacted], however, does not indicate how he dates his acquaintance with the applicant, whether his acquaintance with the applicant was in the United States, how frequently and under what circumstances he met the applicant during the period, or whether the applicant was a continuous resident in the United States throughout the requisite period.

Contrary to counsel's assertion, the record indicates that the evidence pertaining to the requisite period which consists essentially of two letters of employment, and two affidavits, (discussed above) have been thoroughly examined. The record reflects that the applicant submitted leases for the years from January 1980 through January 1985 which were written on paper published in 1987 by Julius Blumberg, Inc. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

It is also noted that the applicant has submitted questionable documentation. The applicant testified that he had entered the United States in May 1981, and departed the United States in September 1982 and returned with a B-2 nonimmigrant visa in October 1982, and he stated in his Affidavit for Determination of Class Membership League of United Latin American Citizens v. INS (LULAC), signed on July 16, 1991, that he had last entered the United States in October 1982 with a visitor's visa. While the applicant claims that he entered the United States in May 1981 without inspection, he does not provide any documentary evidence of his travel from Bangladesh to France to the Bahamas as he claimed at his interview. Nor does he provide any documentary evidence of his departure in September 1982, or his re-entry in October 1982. It is also noted that NIIS records do not indicate an entry or departure for the applicant during these periods. These unresolved discrepancies cast considerable doubt on whether the applicant's claim that he illegally 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). 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.

Also, as stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affiants or the letter writers included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants or letter writers indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw him. Pursuant to 8 C.F.R. § 245a.2(d)(5), the

inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.