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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: SEP 2 4 2008

MSC 02 256 61663

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 District Director, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, and because the applicant was inadmissible due to having been convicted of a crime of moral turpitude. The director noted an inconsistency in the applicant's oral testimony, evidence and application.

On appeal counsel for the applicant submits additional evidence in the form of a letter from the applicant's doctor and expert testimony.

An applicant for permanent resident status 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 and through May 4, 1988. 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).

An applicant must establish eligibility by a preponderance of the evidence. 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 petitioner 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 petitioner 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 or petition.

Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence

may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On March 5, 2007, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988. In addition the NOID informed the applicant that he was inadmissible due to having been convicted of a Crime of Moral Turpitude.

Counsel for the applicant responded that he was convicted of a single misdemeanor and single Crime of Moral Turpitude, and was therefore eligible for LIFE Act Legalization. The applicant also submitted a letter from a doctor implying the applicant's sleep apnea could possibly have affected his memory and cognitive function.

On April 9, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal counsel for the applicant asserts the director's decision was in error and that the applicant is eligible for LIFE Act legalization.

Evidence which pertains to a period after May 4, 1988, does not inform an analysis of the applicant's entry prior to January 1, 1982, and continuous unlawful residence during the required period, and will not be accorded any weight in these proceedings.

Relevant to the period in question the record contains the following evidence:

(1) Letter, attested by [redacted] dated in 2002, asserting he and the applicant were roommates in 1981, and that the applicant entered the United States in 1981.
(2) Letter, signed by [redacted], dated in 1990, asserting that he has lived at [redacted] in Chicago, for six months and that the applicant has lived with him.
(3) Lease, dated in 1990, for the [redacted]s in Chicago, bearing the applicant's name and the name of [redacted]

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

The record for the required period consists entirely of one single affidavit listed at No. 1 above. As noted by the director this affidavit is clearly not credible because it refers to a Chicago

address at which the applicant and the affiant lived in 1990. On appeal the applicant, having been informed of the inconsistency, attempts to assert that he lived part time at this address and a previous address in New York, which the director pointed out he had listed on his I-687. The applicant's assertions are implausible, there is no evidence to support this assertion, and it is the first time the applicant ever made such as assertion. It is clear from these inconsistencies that the applicant's assertions lack any credibility, and that the letters from [redacted] are not credible.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Even in a light most favorable to the applicant, virtually no evidence has been submitted to cover the required period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant has failed to even establish prima facie eligibility, much less eligibility in fact. It is not clear why the director failed to address the lack of evidence for the period prior to January 1, 1982, through May 4, 1988. Nonetheless, as the AAO reviews applications on a de novo basis the appeal will be denied for the additional reason that the applicant has failed to submit any credible evidence of his entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The letter submitted by the applicant from his doctor asserting he has a sleep apnea disorder is of no relevance to these proceedings. Congress has not created any exception for people who claim they fail to remember things clearly, and the AAO finds it absurd that the applicant would construct such an assertion to correct obvious inconsistencies in what little evidence the record contains. In an overall analysis of the record the letter from [redacted] is of no significance whatsoever, as it is not probative of the applicant's assertions in lieu of any actual evidence submitted to demonstrate the applicant entered the United States prior to January 1, 1982, and resided continuously thereafter in an unlawful status for the required period.

The AAO acknowledges the testimony from [redacted] Independently of said letter, the AAO accepts that a single misdemeanor Crime of Moral Turpitude does not disqualify the applicant for LIFE Act eligibility. This portion of the director's decision will be withdrawn.

Nonetheless, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established the eligibility and the appeal will be dismissed.

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