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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: APR 06 2009

MSC 02 052 61803

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).

IN BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom
Acting 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 director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel puts forth a brief disputing the director's decision.

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 and through May 4, 1988. Section 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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.

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. Here, the applicant has failed to meet this burden.

The record reflects that an investigation was conducted in order to verify the authenticity of the applicant's birth certificate. During a field investigation trip to Punjab, India in September 1992, the local registrar of births and deaths at Faridkot, Punjab certified that the birth certificate presented with the applicant's Form I-687 application in 1990 was fraudulent.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- An affidavit from [redacted] in New York City attesting to the applicant's employment as a stock boy from August 1985 to September 1988. The affiant's signature is indecipherable.
- Affidavits from [redacted] of Delano, California, who indicated that he met the applicant in 1981 and attested to the applicant's residences and employment in California and New York since September 1981. The affiant based his knowledge on "meeting each other on a regular basis, and I have also visited him at his residences and I also speak to him on the telephone in California and New York."
- An affidavit from [redacted] of Bayside, New York, who attested to the applicant's residence at [redacted], Corona, New York from January 1986 to February 1990. The affiant asserted that he and the applicant regularly visited each other's homes and he has been in contact with the applicant since that time.
- **An affidavit from [redacted] of Jackson Heights, New York, who** attested to the applicant's California and New York residences since June 1982. The affiant asserted that he and the applicant regularly visited each other's homes.
- An affidavit from [redacted] of Elmhurst, New York, who indicated that he has personally known the applicant since September 1981 and attested to the applicant's California and New York residences since that time. The affiant asserted that he and the applicant regularly visited each other's homes.

On July 19, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that he had presented a fraudulent birth certificate. The applicant was also advised that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record;

were not amenable to verification; and contained no evidence demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits.

Counsel, in response, asserted that the applicant informed his office, "that he never submitted any birth certificate along with his application in 1990, neither for himself nor for his family members." Counsel asserted that the applicant also informed his office that he could only provide affidavits from two individuals attesting to his residence prior to January 1, 1982 because "he lost contact with most of the people whom he met in 1981-1982." Counsel asserted that the contradiction and inconsistency was only due to confusion. The applicant indicated that he has been residing in the United States since 1981. Counsel provided an affidavit from the applicant's brother, [redacted] who indicated that he has been residing in the United States since 1985. The affiant attested to the applicant's residence in the United States since 1981 and to his absences in 1987 and 1988.

Counsel submitted an affidavit from the applicant, who indicated that during the requisite period, he traveled to India in June 1987 and on March 20, 1988 (returned April 15, 1988). The applicant indicated that he did not mention his 1988 visit because the individual who prepared the application made a typographical mistake.

It must be noted that the applicant's claim to have departed the United States in 1988 was put forth once it was addressed by the director in a separate proceeding.[1]

On appeal, counsel, asserted, in pertinent part:

> The respondent through the present counsel wishes to state that he does not make any overt attempt to change any events or circumstances. Whatever he explained in his NOID is true and correct according to his knowledge and belief. He got confused at the interview as it was the information from the last 20 years.

Counsel submits additional photocopied affidavits from the applicant's brother, [redacted], and acquaintances, [redacted] and [redacted], who reasserted the veracity of their initial affidavits.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E--*

[1] In a separate proceeding, the director determined that the applicant was in India in 1988 as he had a child born in India on December 26, 1988.

M--, supra. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--, supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant and counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988.

The employment letter from [redacted] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the letter also failed to 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. Furthermore, the signature on the employment letter is indecipherable, thereby giving rise to questions regarding whether the signature is that of a person who was authorized and affiliated with the entity.

The applicant claimed on his application to have been employed at [redacted] from September 1981 to June 1985, but provided no evidence from the employer to support his claim.

The applicant's assertion that he never provided a birth certificate with his Form I-687 application in 1990 is not supported by the record. The record contains a birth certificate along with a notarized English translation that lists the applicant's information. The derogatory information establishes that the applicant made material misrepresentation in asserting his claim of residence in the United States for the period in question and thus casts doubt on his eligibility for adjustment to permanent residence under the provisions of the LIFE Act. By engaging in such an action, the applicant has negated his own credibility, the credibility of his claim of continuous residence in this country for the requisite period, and the credibility of all documentation submitted in support of such claim.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a

preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E--M--*, *supra.*

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted a falsified document, we affirm the director's decision. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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