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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: GARDEN CITY Date: APR 22 2009

MSC 01 303 60680

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, Garden City, 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, the applicant asserts that he did provide evidence in his response to the Notice of Intent to Deny. The applicant states that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant submits copies of the affidavits that were previously provided.

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 record reflects that on November 1, 1996, a notice was issued to the applicant informing him of a large-scale fraud investigation centered in Las Vegas, Nevada, Phoenix, Arizona, and Los Angeles, California. The operation targeted providers of fraudulent applications and documentation in the legalization and special agricultural worker programs, as well as class membership applications and documentation in the legalization class-action lawsuits; *Catholic Social Services, Inc. v. Meese*, *vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (*CSS*), *League of United Latin American Citizens v. INS*, *vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (*LULAC*), or *Zambrano v. INS*, *vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (*Zambrano*). The applicant was informed of adverse information that had been obtained relating to his claim to class membership. Specifically, the preparer of his Form I-687 application, [redacted] had been convicted of violations of 18 U.S.C. § 2, Aiding and Abetting, 18 U.S.C. § 371, Conspiracy, and 18 U.S.C. § 1001, False Statements, in the United States District Court for Las Vegas, Nevada on May 8, 1995. The attorney representing him in conjunction with the submission of his Form I-687 application, [redacted] and the notary, [redacted] who notarized his supporting documents had been convicted of a violation of 18 U.S.C. § 371, Conspiracy, on June 8, 1995. The legalization officer who approved his application for class membership was convicted of violating 18 USC §§ 371 and 201(B)(2)(A), Conspiracy and Bribery, respectively. The applicant was also informed that [redacted], the notary who notarized his self-employment letter, fraudulently utilized her notary stamp thereby assisting in the preparation of fraudulent class membership application.

The fact that the preparer and the attorney who represented the applicant in the filing of the Form I-687 application were both convicted of felony violations for their roles in the submission of fraudulent applications and documentation seriously diminished the credibility of information contained in the applicant's Form I-687 application and supporting documentation. The applicant was granted thirty days to respond to the notice. The applicant, however, failed to respond to the notice and on January 14, 1997, the applicant's work authorization and class membership were revoked and the file was permanently closed.

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.

At the time of his LIFE interview, the applicant indicated that he had been arrested one time.

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

- An affidavit from [redacted] of New York, who attested to the applicant's residence in New York at [redacted] Woodside from July 1981 to January 1986. The affiant indicated the applicant was his roommate.
- An affidavit from a brother, [redacted] of New York, who attested to the applicant's residence at [redacted] Flushing, New York from January 1986 to February 1996.
- An affidavit from [redacted] of Bronx, New York, who attested to the applicant's residence at [redacted], Flushing, New York from January 1986 to February 1996. The affiant asserted that the applicant was his mechanic and later they became friends.

On April 3, 2004, August 7, 2005, and April 3, 2007, a Form I-72 was issued informing the applicant that the evidence submitted did not establish his residence for the entire period. The applicant was requested to submit evidence to establish his continuous residence in the United States since before January 1, 1982 to the date his application was filed. The applicant, however, did not respond to the notices.

On January 2, 2008, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was also advised of his failure to submit the court disposition for his arrest.

The director, in denying the application, noted that the applicant failed to respond to the Notice of Intent to Deny. A review of the record, however, reveals that a response was received prior to the issuance of the director's decision. The applicant's response will be considered on appeal.

In response, the applicant asserted during the requisite period he did not have a social security number and, therefore, he had no primary documents to provide. The applicant asserted that due to the passage of time, he has lost all his receipts from various stores. The applicant asserted, "my arrest was disclosed at the time of the interview and also the disposition of the arrest." The applicant submitted:

- An additional affidavit from [redacted] who indicated that the applicant was his roommate from January 1986 to February 1996 at [redacted] Flushing, New York.
- An additional affidavit from [redacted], who indicated that he stayed with the applicant as a roommate from July 1981 to January 1986 at [redacted] Woodside, New York. The affiant asserted that he met the applicant in Richmond, Queen at Gurudwara (Sikh) Temple in 1981.

The applicant may have informed the interviewing officer of the disposition of his arrest; however, the actual court disposition was not provided.

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-- 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 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, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The applicant claimed on his Form I-687 application that he was self-employed during the requisite period. However, the applicant provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F R. § 245a.2(d)(3)(i).

[redacted] in his affidavit, attested to the applicant's residence from July 1981 to January 1986 at [redacted] Woodside, New York. The applicant, however, on his Form I-687 application did not claim residence at this address during the requisite period.

[redacted] in his affidavit, attested to the applicant's residence at [redacted], Flushing, New York from January 1986 to February 1996. The applicant, however, on his Form I-687 application claimed residence at this address through February 1990. Further, in his initial affidavit, the affiant made no mention of the applicant residing with him during the requisite period.

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).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the

United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, the FBI report dated August 18, 2001, reflects that the applicant was arrested by the New York Police Department on November 28, 1993 for criminal possession weapon deface/conceal and menacing in the 3rd degree. As the record does not contain the arrest report and the court disposition, the final outcome of this arrest is unknown.

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