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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: JAN 23 2009

MSC 02 120 62375

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, the applicant asserts the director failed to consider the passage of time from 1981 to 2007 in regards to the evidence submitted. The applicant states that the director's finding that his documents are fraudulent is totally flawed and without any merits. The applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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.

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

- A letter dated November 14, 1983, from [redacted] of The Islamic Center of New Jersey, who indicated that the applicant resided at the mosque for approximately two weeks in November 1981 and that the applicant subsequently moved to [redacted] Jamaica, Queens, New York. The affiant asserted that the applicant has been a member of the mosque since 1981.
- A letter dated December 21, 1985, from [redacted] president of Muslim Center of New York, who indicated that the applicant has been a member of the Muslim Center since December 1981.
- Notarized affidavits from [redacted] and [redacted] of New York, New York, who both indicated, "I also know through information and belief that [the applicant] came to United States on or about November 1981." The affiants attested to the applicant's residence from November 1981 to May 1989 at [redacted], Jamaica, New York and to his employment at Eastern Empire Contracting Co., from November 1981 to March 1985 and at Fabric from March 1985 to May 1989. indicated that she went to the airport when the applicant departed to Pakistan on August 10, 1987. [redacted] based her knowledge on the applicant's August 10, 1987 departure because [redacted] went to see the applicant off at John F. Kennedy Airport.
- A letter dated July 23, 1985, from [redacted], who claimed to be a medical doctor at North Central Bronx Hospital in Bronx, New York and indicated that the applicant was seen on December 14, 1981 for anxiety and sleep difficulties.
- A letter dated August 2, 1982, from a representative of The City College New York, New York regarding the applicant's interest in continuing his education at the college. It is noted that the name of the signatory is indecipherable.

- A letter dated December 15, 1981, from [redacted] circulation director of Popular Electronics, in Mt. Morris, Illinois, regarding the applicant's interest in its electronics program.
- A letter dated June 5, 1989, from [redacted] of [redacted] Fabric Corp. in New York, New York, who attested to the applicant's employment as a salesperson from March 11, 1985 to May 26, 1989.
- An airline ticket with a purported date of issue of August 10, 1987.
- A patient copy of discharge instructions from Catholic Medical Center of Brooklyn & Queens, Inc., dated in 1982.
- Documents from Habib Bank Limited, New York Branch dated March 14, 1985 and February 12, 1988.
- A letter dated May 8, 1989, from a representative of Pan American World Airways, Inc, indicating that the applicant traveled from New York to London on August 10, 1987.
- A letter from of Pakistan, who attested to the applicant's presence in Pakistan from August 10, 1987 to September 20, 1987.

On July 5 2007, the director issued a Notice of Intent to Deny, which advised the applicant that at the time of his LIFE interview, most of the applicant's testimony appeared fictitious, vague, rehearsed and not credible and there was no credible primary evidence prior to issuance of the applicant's passport in New York on September 7, 1989. The director advised the applicant that on April 22, 2005, the U.S. Citizenship and Immigration Services (USCIS) contacted the admission office at The City College of New York and the admission counselor at the Office of Undergraduate Admission indicated that the letter dated August 2, 1982 was fraudulent. Further, on April 22, 2005, USCIS contacted the accounting department at North Central Bronx Hospital and was informed that according to their records, [redacted] had never worked or had been affiliated with the hospital. The USCIS also reviewed license records from the Department of Education and there was no indication of [redacted] having a license to practice medicine in New York. The applicant was further advised that, "the original copy of the documents submitted were artificially treated to appear aged" and that the affidavits and letters submitted failed to carry the burden of proof and cast doubts to the veracity of his claim.

The applicant, in response, reasserted the veracity of his claim to have entered the United States in November 1981; resided at [redacted] Jamaica, New York; and worked at Eastern Constructing Co. and [redacted] Fabrics from November 1981 to March 1985 and March 1985 to May 1989, respectively. The applicant stated that the letter from North Central Bronx Hospital and The City College of New York were original and authentic letters. The applicant asserted, in pertinent part:

> For no legal reasons, these letters are being branded as fraudulent because the INS Officer through his subjective observations became prejudiced and for some reason is bent upon to deny this case. There is other evidence contained in my file specifically, 2 affidavits from the U.S. citizens which have been totally ignored by the INS.

The applicant submitted two additional affidavits from and [redacted], who reaffirmed their previous affidavits.

The director, in denying the application, noted that the information submitted was insufficient to overcome the grounds for denial. The director determined that the affiants were making an overt attempt to explain away many of the inconsistencies uncovered during the review and outlined in the Notice of Intent to Deny. The director determined that the submission of the fraudulent letters seriously damaged and compromised the integrity and authenticity of any evidence the applicant had submitted. The director concluded that the applicant had failed to submit evidence from North Central Bronx Hospital or corroborating evidence of the doctor's residency in the hospital to refute her finding.

The applicant, on appeal, states, in pertinent part:

> The Service failed to appreciate the fact that these documents were issued to the applicant in later years. The Service decided the applicant's case in year 2007. A lot of events have happened over the period of time. Many of the people had left their jobs, their addresses changed, had moved from these places, or immigrated to other part of the world. The entities might have even gone out of business. In the instant case, the Service has alleged that the letter issued by the physician who worked in the North Central Bronx Hospital is fraudulent and appears to have been artificially treated to make it look older in age. This is entirely a subjective observation. The Service did not provide proof of its status checks of these entities, but it is important to know because the person in the North Central Bronx Hospital accounting department who provided the alleged information on April 22, 2005{after a time lapse of 20 years} may have been ignorant of the name of the physician or may have even provided the wrong information through his memory. With regard to the Department of Education license records, that the said physician has ever been licensed to practice medicine in New York, the applicant is unable to comment because he has no personal access to such records. The only fact he is personally aware of is that on July 23, 1985, he was seen by a doctor and was referred to another physician for his medical condition.
>
> Likewise, the letter issued dated August 02, 1982 by The City College, Office of the Undergraduate Admissions signed by the Coordinator of Clerical Processing cannot be said to be fraudulent merely because some unnamed admission counselor says so on April 22, 2005.

The 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. Specifically:

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 affiant 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.

In an affidavit notarized on April 10, 1990, the applicant indicated that he departed the United States on August 10, 1987 and returned on September 20, 1987. However, the applicant presented an affidavit notarized a day before from [redacted], who swore under oath that the applicant did in fact leave the United States in September 1987 and returned in October 1987.

The letters from The Islamic Center of New Jersey and Muslim Center of New York have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiants do not explain the origin of the information to which they attest. Further, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

Although [redacted] and [redacted] attested to the applicant's residence and employment during the requisite period, the affidavits are silent to the basis of their continuing awareness of the applicant's residence and employment. Further, the affiants cannot attest to the applicant's alleged reentry on September 20, 1987 as they made no indication in their affidavit that they were at the Mexican border on that day.

The photocopied airline ticket raises questions to its authenticity as it: 1) was handwritten except for the date of issue which was typed; and 2) does not correspond with the letter issued by Pan American World Airways, Inc.

Except for his own testimony, the applicant has not provided any credible evidence to dispute the director's finding regarding the letters from North Central Bronx Hospital and The City College of New York. The applicant cites no statute or regulation that compels the director to provide the applicant with "the proof of its status check of these entities" without a request for a review of the record of proceeding or the filing of a Form G-639, Freedom of Information Act/Privacy Act Request. The regulation at 8 C.F.R. § 103.2(B)(16)(i) requires USCIS to notify the applicant of derogatory information when an adverse decision is proposed. The director did so in her notice of July 5, 2007. Simply 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's assertion that "he has no personal access" to verify whether [redacted] was licensed to practice has no merit as this information is a matter of public record. Furthermore, the applicant statement on appeal contradicts the letter provided by Specifically, indicated that the applicant was seen on December 14, 1981; however, the applicant states that he was seen on July 23, 1985. The contradiction further undermines the credibility of the affidavit from [redacted]

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.

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