U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: GARDEN CITY Date: JUN 03 2009

MSC 02 246 62798

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.

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 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 states the director erred in not giving adequate weight to the evidence, and asserts that the applicant has submitted sufficient evidence to establish the requisite continuous residence. 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.

In the Notice of Intent to Deny (NOID), dated August 13, 2007, the director stated that the applicant failed to submit sufficient evidence establishing his entry prior to January 1, 1982, and demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted affidavits that were neither credible, nor amenable to verification. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated September 24, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID but the evidence submitted was insufficient to overcome the reasons for denial stated in the NOID.

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 evidence, including letters and affidavits as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Employment Letters

1) The applicant submitted a letter of employment from [redacted], stating that the applicant had been employed from 1983 to 1985. [redacted] however, does not indicate the dates when employment commenced, or ended, and, the capacity in which the applicant was employed.

2) The applicant submitted a letter of employment, dated March 21, 1990, from [redacted], located at [redacted], stating that the applicant had been employed from 1985 to 1985. Mr. [redacted], however, does not indicate the capacity in which the applicant was employed, or when in 1985 the employment commenced.

It is noted however, that the letters failed to provide the applicant's address at the time of employment. Also, 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). The letters, therefore, are not probative as they do not conform to the regulatory requirements.

Affidavits & Letters

The applicant submitted the following:

1. Affidavits from [redacted], dated May 3, 1990, and September 7, 2007, attesting that the applicant resided with him, at [redacted] from April 1981 until 1990. [redacted] also attests that he provided support for the applicant while he was a minor until 1983. The affiant, however, does not indicate what led him to provide accommodation for the applicant as a minor child, whether he had been entrusted with the care of the applicant as a minor, such as whether he was the applicant's guardian, and the specific responsibilities he had to care and provide for the applicant. Also, the affiant does not indicate when in 1983 he stopped providing for the applicant.

2. Affidavits from [redacted] and [redacted] Mr. [redacted] attests that he has known the applicant to have resided in the United States since 1981, and also states that he lived close to the applicant and that they spent "quality time" together as friends, and on weekends the applicant would visit his family; [redacted] attests that he has known the applicant to have resided in the United States since July 1981, and also states that he and the applicant became "good friends;" [redacted] attests that he has known the applicant to have resided in the United States since 1981, and also states that he and the applicant have been "good friends" since 1981; and, Mr. [redacted] attests that he has known the applicant to have resided in the United States since 1981, and also states that he knew the applicant in Ecuador, and they often visit each other. The affiants, however, do not indicate how they date their acquaintance with the applicant, and how often and under what circumstance they had contact with the applicant during that time.

The record of proceedings also contains a letter from [redacted] of Our Lady of Lourdes Church, located at 472 West 142nd Street, New York, NY 10031. [redacted] states that the applicant has been a member of the church since May 1981, and that the applicant regularly attends mass. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letter from the Our Lady of Lourdes Church does not comply with the above cited regulations because it does not: state the address where the applicant resided during attendance ...(membership)

... period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance (membership) records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letters are not deemed probative and are of little evidentiary value.

Contrary to counsel's assertion, as discussed above, the evidence submitted, consisting of letters and affidavits, lack detail. As such, the evidence provided does not establish the applicant's entry into the United States prior to January 1, 1982, or the requisite continuous residence.

It is also noted that the applicant, who was born in 1967, was 13 years old in April 1981 when he claims that he first entered the United States. It is reasonable to expect that the applicant would be able to provide school records, such as elementary school records. However, he does not provide any school records whatsoever, and he does not give an explanation as to why such evidence is not available.

The above discrepancies cast doubt on whether contents of the applicant's applications are true and whether the applicant has resided in the United States sine April 1981 as he claims. 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). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. 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.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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. Given the applicant's reliance upon documents with minimal 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.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.