U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: NEW YORK Date: MAR 30 2009

MSC 01 310 60133

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: SELF-REPRESENTED

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, New York, 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, the applicant asserts that he has submitted sufficient evidence to establish the requisite continuous residence. The applicant also states that his house was destroyed by fire and most of his documents were burned. The applicant submits 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 January 8, 2008, the director stated that the applicant failed to submit sufficient evidence 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 noted, for example, that two affiants, [redacted] and [redacted] attested to the applicant's residence in the United States during the requisite period; however, according to Service records, [redacted] entered the United States in August 1988, and [redacted] entered the United States in May 1991. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated March 11, 2008, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, however, the response failed 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.

The above discrepancies, and lack of detail, cast considerable doubt on the applicant's claim that he has resided continuously in the United States since prior to January 1, 1982. 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.

The applicant's assertion that because fire burned his documents he cannot provide additional evidence to establish the requisite continuous residence, is not persuasive. The applicant states that his house was destroyed by fire and most of his documents to establish his case were burned. The applicant, however, does not provide any information, such as evidence of the fire damage, or a list

and description of the documents which he claims were burnt. It cannot be discerned, therefore, whether duplicates could be obtained for these documents, whether the information in the documents could be reconstructed, or whether the documents may have probative value. CIS cannot, therefore, accept the applicant's mere assertions that the documents that were in the applicant's home were destroyed and cannot be reproduced and are critical to establish the applicant's case.

Affidavits & Letters

The applicant submitted the following:

1. A letter, and an affidavit, from [redacted], dated June 9, 1993, and June 10, 1993, respectively. In his letter [redacted] states that he has known the applicant since 1981 and since then they have been good friends. Mr. [redacted] also states that he had telephone contact with the applicant on occasions when the applicant was out of state; however, he does not indicate when he first became acquainted with the applicant in the United States; whether and how frequently he maintained contact with the applicant; and, whether the applicant was a continuous resident since that time.

   In his affidavit, [redacted] attests to having known the applicant to have resided in the United States since July 1981; that he met the applicant at a party in Woodside, Queens, New York, in July 1981; and, that he had not seen the applicant for eight (8) years and four (4) months since having met the applicant in the United States. The affiant, however, does not indicate whether and how he maintained contact with the applicant during the requisite period

2. An affidavit from [redacted], dated June 10, 1993, attesting to knowing the applicant to have resided in the United States since July 1981. Mr. [redacted] also states that he has known the applicant from his home in Bangladesh; that he met the applicant in Woodside, Queens, New York in July 1981; and, that he had not seen the applicant for six (6) years and nine (9) months. The affiant, however, does not indicate whether and how he maintained contact with the applicant during the requisite period.

3. An affidavit from [redacted], dated June 10, 1993, attesting to knowing the applicant to have resided in the United States since July 1981. Mr. [redacted] also states that he first met the applicant in 1981 when the applicant came to his house with a friend; and, that he had not seen the applicant for seven (7) years and five (5) months. The affiant, however, does not indicate whether and how he maintained contact with the applicant during the requisite period.

4. A notarized letter from [redacted] stating that the applicant, his brother-in-law, lived with him "on and off since 1985." Mr. [redacted] however, does not indicate the location where the applicant resided with him, or whether the residence was in the United States. It is noted that the affiant's address on [redacted]s letter, [redacted] Brooklyn, New York 11235, does not correspondent to any of the addresses the applicant listed on his Form I-687 application, which he signed on May 11, 1993 wherein he indicated that he resided at [redacted] Cambridge, Mass., from November 1981 to March 1987. **This letter is,**

therefore, not probative as it does not provide essential details such as the location of the claimed residence.

5. An affidavit from [redacted], dated January 3, 2001, attesting to knowing the applicant to have resided in the United States since 1981, and that since then she has met the applicant on occasions. Ms. [redacted] however, does not indicate how she dates her acquaintance with the applicant, and whether and how frequently she had contact with the applicant during the requisite period.

Contrary to the applicant's assertion, he has submitted questionable documentation in an attempt to establish the requisite continuous residence. For example, the applicant provided an apartment lease dated January 1, 1982. It is noted that the purported lease states that it covers the premises known as [redacted]. The lease is questionable, however, as it does not indicate an apartment address, or an apartment or unit number. Also, as noted above, the letter from [redacted] states that the applicant resided with him "on and off since 1985." However, on his Form I-687 application, the applicant indicated that he resided at [redacted], Cambridge, Mass., from November 1981 to March 1987. In addition, [redacted] attested to the applicant's residence in the United States since July 1981, and [redacted], attested that the applicant resided with him in the United States since 1985. However, as noted by the director, according to Service records, [redacted] entered the United States in August 1988, and [redacted] entered the United States in May 1991. Given these discrepancies it is unlikely that any of these affidavits are genuine.

The above discrepancies cast considerable doubt on whether the affidavits provided are genuine, and whether the applicant resided in the United States since 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.

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.