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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[redacted]

FILE: [redacted] Office: WEST PALM BEACH Date: NOV 03 2009

MSC 03 183 60305

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.

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, West Palm Beach, Florida, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient evidence to establish his eligibility for LIFE Act legalization. Counsel 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 – Request for Evidence (NOID), dated July 14, 2005, the director requested that the applicant submit evidence establishing that he had entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988, and listing all absences from the United States. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated August 22, 2005, the director denied the instant application because the applicant failed to establish the requisite continuous residence. The director noted that the evidence provided, including affidavits, was not persuasive and was insufficient to establish the requisite continuous residence.

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 various documents, including letters and affidavits, as evidence to support his Form I-485 application. Here, the submitted evidence is neither credible, nor probative.

Contrary to the applicant's assertion, he has submitted questionable documentation. In an attempt to establish his continuous residence since 1981, the applicant submitted numerous letters and affidavits which are not reliable, or are not amenable to verification. For example, documents purportedly from [redacted], and [redacted] attesting to the applicant's continuous residence, are not reliable as the are not notarized. The remaining documents, including affidavits, are notarized by [redacted] These documents, however, are unreliable as the "notary" [redacted] is known to have prepared fraudulent immigration documentation for various applicants. The record also reflects that the applicant's Form I-687, signed January 20, 1988, and his Form for Determination of Class Membership in CSS v. THORNBURGH (MEESE), and accompanying documentation, were also notarized by [redacted]

The large number of unreliable documents provided by the applicant cast considerable doubt on whether the evidence provided by the applicant, including certifications and affidavits, is genuine; and, whether the applicant's claim that he entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. 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). 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.

In addition, at part # 32 of the I-687 Application, which requires applicants to list all absences from the United States, the applicant indicated that he visited Canada from September 1987 to November 1987, the record indicates that the applicant departed the United States for Canada, on September 14, 1987, and returned on November 21, 1987, thereby indicating that he had a single absence of over 45 days. The applicant indicates on his Form I-687 application, signed January 20, 1988, that his absence was "to provide care to [his] cousin who got involved in a car accident."

However, there is no evidence of record to indicate the applicant's absence was due to an emergent reason. The applicant did not provide any further evidence that his cousin's medical condition in Canada caused him to delay his return. The applicant does not provide evidence apart from his own statement, that his "cousin" had been injured and needed medical care; evidence of the nature and extent of his cousin's injury; evidence of the claimed relationship with his cousin; and, why his presence in Canada for over 45 days was necessary. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony, and in this case he has failed to do so. Clearly, the applicant's departure to Canada from September 14, 1987, until November 21, 1987, represents a break in his continuous residence during the requisite period.

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C,* 19 I&N Dec. 808 (Comm. 1988).

The applicant's absence from the United States from September 14, 1987, until November 21, 1987, a period of more than 45 days for a single absence, is clearly a break in any period of continuous residence he may have established. As he has not provided any evidence other than his own attestation that his cousin's illness was the "emergent reason" for his failure to return to the United States in a timely manner, he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-, supra.*

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.