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U.S. Citizenship  
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FILE:

MSC 02 165 61919

Office: HARTFORD Date:

AUG 02 2007

IN RE:

Applicant:

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The district 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, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel argues that the director abused his discretion by imposing a higher burden than a preponderance of evidence.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(b).

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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided affidavits and statements from [REDACTED] and [REDACTED]

Manzoor. The applicant also submitted photocopies of receipts and envelopes with indecipherable names, dates or postmarks.

On February 12, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that the supporting documents submitted failed to provide a preponderance of evidence that would validate his claim of continuous unlawful residence and physical presence.

The director, in denying the application on August 21, 2004, concluded that the applicant had failed to respond to the notice. The record, however, reflects that a response to the notice was received prior to the issuance of the director's decision. The documents will be considered on appeal. In response, the applicant submitted photocopies of:

- A prescription dated October 4, 1984 from Norwood Drugs & Surgicals in Long Island City, New York.
- A violation notice ( ) issued by the City of New York Environmental Control Board purportedly in 1982.
- Two envelopes postmarked in 1987 addressed to the applicant at New York.

The applicant also submitted other documents that have no probative value or evidentiary weight as they were either dated subsequent to the requisite period or contained no date.

A review of the violation notice issued by the City of New York Environmental Control Board appeared to have been altered; the year appears to have been amended to read "82." As such, on June 7, 2006, the AAO sent a notice to the applicant and counsel, requesting the original document of the violation notice. The applicant was advised that the regulation at 8 C.F.R. § 103.2(b)(5) provides where a copy of a document is submitted with an application, the Service may at any time require that the original document be submitted for review. If the requested original, other than one issued by the Service, is not submitted, the application shall be denied or revoked.

The applicant was given 12 weeks in which to submit the original document. The notice to the applicant, however, was returned by the post office as undeliverable and no response has been submitted by counsel.

On appeal, counsel asserts that the director's decision failed to inform the applicant's of appellate rights. While the Notice of Decision failed to mention the appellate rights, the Form I-290B, Notice of Appeal, which accompanied the decision, contained specific instructions on filing an appeal to the AAO.

Counsel's statements on appeal have been considered; however, the AAO does not view the documents above as the applicant has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

- 1) The 1987 postmarked envelopes contain a different address from where the applicant claimed to have resided on his Form I-687 application.
- 2) claim attesting to the applicant's residence in Queens, New York since October 1981 has not probative value as the affiant claimed to have known the applicant since 1982.
- 3) attested to the applicant's employment at Diarmart from March 1985 to September 1985. The applicant, however, did not claim any employment on his Form I-687

application until August 1985. In addition, the employment claimed on the Form I-687 application in August 1985 does not correspond with [REDACTED]'s letter.

- 4) The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests. It is noted that the applicant indicated on his Form I-687 application that he was *not* affiliated with any religious organization during the requisite period.

These factors tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for 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 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation, absence of a plausible explanation, 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.