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FILE:

[REDACTED]

Office: NEW YORK Date:

MSC 02 067 62161

JUL 06 2007

IN RE:

Applicant:

[REDACTED]

APPLICATION:

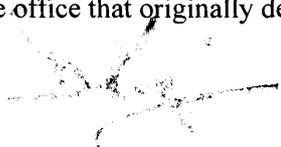
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the: 1) 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; 2) applicant failed to register under the Military Selective Service Act; and 3) applicant's 1987 absence from the United States was not considered casual or innocent.

On appeal, counsel disputes the director's findings and asserts that the applicant has submitted sufficient verifiable documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides copies of previously submitted documents in support of the appeal.

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).

Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

The regulation at 8 C.F.R. § 245a.16(b) provides:

For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

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 the following evidence:

- A letter from [REDACTED] of Mississauga, Canada, who indicated that she first met the applicant in 1980 on a flight from Saudia Arabia to Nigeria. The affiant asserted that the applicant visited her in Canada from October 5, 1987 to October 1987.
- Three envelopes postmarked in 1983 and 1987, which were addressed to the applicant at [REDACTED] Hollis, Queens, New York and [REDACTED], Jamaica, Queens, New York respectively.
- An affidavit notarized September 8, 1989 from [REDACTED] of Jamaica, New York, who attested to the applicant's Jamaica, New York residences from June 1980 to January 1985 at [REDACTED] Street and from February 1985 to April 1989 at [REDACTED]. The affiant indicated that this knowledge was based on "Nigeria Consulate Office in Manhattan, New York."
- An affidavit notarized September 7, 1989 from [REDACTED] of Jamaica, New York, who attested to the applicant's Jamaica, New York residences from June 1980 to January 1985 at [REDACTED] and from February 1985 to April 1989 at [REDACTED]. The affiant indicated that this knowledge was based on "[REDACTED] Brooklyn NY 11212."
- An affidavit notarized September 8, 1989 from [REDACTED] of Hollis, New York, who attested to the applicant's Jamaica, New York residences from June 1980 to January 1985 at [REDACTED] and from February 1985 to April 1989 at [REDACTED]. The affiant indicated that this knowledge was based on "through [REDACTED] at [REDACTED]."
- An additional affidavit notarized August 5, 1989 from [REDACTED] who indicated that the applicant resided with her from June 1980 to January 1985.
- An affidavit notarized December 27, 1989 from [REDACTED] of Jamaica, New York, who indicated that the applicant resided with him at [REDACTED] from February 1985 to April 1989. The rent receipts and household bills were in the affiant's name.
- A letter dated June 25, 1990 from [REDACTED], manager of Merrick Car Services Inc., in Jamaica, New York, who indicated that the applicant was employed as a dispatcher from May 1982 to May 1990.

- Several rent receipts for residence at [REDACTED] issued in December 1985 to May 5, 1988 and signed by [REDACTED] or [REDACTED]

On February 6, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that: 1) the affidavits were not verifiable as the affiants failed to provide their telephone numbers; 2) [REDACTED], in her affidavit, failed to list the address the applicant was resided during the period in question; 3) at the time of his interview, he indicated that in 1985 he resided alone at [REDACTED]; however, [REDACTED] claimed that the applicant was a roommate at this address from February 1985 to April 1989; 4) the postmarked envelopes had no probative value as they did not contain a United States postmark.; 5) the applicant failed to register under the Selective Service System; and 6) his 1987 absence to Canada cannot be considered innocent and casual as the applicant had no intention of returning to the United States.

In response, counsel submits an affidavit from the applicant in an effort to clarify the discrepancies noted in the Notice of Intent to Deny. The applicant asserted, in part:

Regarding my brief trip to Canada, please note that my intention was only to visit and not remain there permanently. I only stayed there for about a week and at no time during this period did I not intend to return back to the U.S. In fact, all my belongings remained in the U.S. I always intended to return back to New York. I did not go to Canada to get a job there, but rather to visit my friend, [REDACTED]. At my interview, after the officer asked me if I wanted a job there, I stated that I may have considered a good job if I was offered one. But the job was not my reason for traveling to Canada. I went to visit my friend. I always preferred and still do prefer the U.S. and never intended at any time to not return to the U.S. My trip was very casual and I expected to and did return to the U.S. after about two weeks.

I would like to clarify any misunderstandings during my interview by unequivocally stating that I always wanted to remain in the U.S. and never at any point in time did I intend to completely leave the U.S. and not return.

\* \* \*

Regarding the affidavits I submitted, I would like to state that at the time those documents were prepared, I did not know very much English and the affidavits were usually standard forms, that I believed were proper and also sanctioned by the government. Also I could only afford to use an attorney for most important purposes and not everything. Therefore, because the forms did not ask for phone numbers, the affidavits do not contain the phone numbers for the individuals. Because it has been a long time, I cannot now locate anyone to confirm the facts of those affidavits.

Since, the time the affidavits were prepared, I have lost touch with most of the persons who made the statements. I have tried my very best to contact them so that they could reconfirm their statement, but have not, to date, been very successful.

With respect to my statements regarding [REDACTED] I would like to confirm that I lived with her at [REDACTED] Hollis, New York from about June 1980 to January 1985. I have not kept in touch with her and despite my best efforts I have been unable to locate her to assist in re-confirming her affidavit.

Regarding the matter of me residing at [REDACTED], I would like to clarify that I did indeed live with [REDACTED] from about February 1985 to 19989 [sic], and I don't recall stating that I lived alone. It is likely that I possibly misunderstood the examiner's question. I did indeed reside with the [REDACTED] at [REDACTED]

Counsel also submitted:

- A notarized affidavit from [REDACTED] of Jamaica, New York, who asserted that she met the applicant during the middle of 1981 "when I used to call him for taxi service."
- A notarized affidavit from [REDACTED] of Jamaica, New York, who asserted that he met the applicant in January 1982 at the Nigerian Consulate in New York and have remained in contact with the applicant since that time.
- A notarized affidavit from [REDACTED] of Maryland, who indicated that he has known the applicant for over 30 years and attested to the applicant's residence in the United States since the early 1980's. The affiant asserted that he visited the applicant during August 1983 at [REDACTED] Hollis, New York, and that he has maintain regular contacts with the applicant since that time.
- A notarized affidavit from [REDACTED] of Jamaica, New York, who indicated that she has known the applicant "since 1984 and used to call him for car services."
- A notarized affidavit from [REDACTED] of Valley Stream, New York, who indicated that he has known the applicant since 1987. The affiant asserted he was a co-worker of the applicant at Merrick Car Service. The affiant asserted that he has remained in contact with the applicant since that time.

The director, in denying the application, noted that [REDACTED]'s affidavit contradicted the applicant's testimony "as she made no note of you ever having lived together, as you testified. She also claims to have met your through [REDACTED], but you testified that you were referred to her through the Nigerian consulate;" Regarding the applicant's residence at [REDACTED], the director noted that the applicant's attempt to amend his claim to have resided with [REDACTED] contradicted his testimony at the time of his interview "to have had an apartment by yourself." The director determined that these contradictions cast doubts upon the applicant's credibility.

Regarding the applicant's failure to register under the Selective Service System, the director noted, in part:

The statutory obligation for each man who is required to register continues until he reaches age 26. You were born in 1957, and allegedly entered the United States in 1980, which would mean you were present in the United States as an undocumented or illegal alien at the age of 23 years old.

Regarding the applicant's one week absence in 1987, the director noted that "the interviewing officer never asked you if you wanted a job in Canada. You volunteered this information when the actual question, Why did you depart the United States? was given. You specifically stated that the reason for the trip was to get a job."

The director concluded that the applicant had failed to provide competent objective evidence to explain the inconsistencies and contradictions, and that the documents submitted in response to the Notice of Intent to



3. Although there is no requirement for envelopes postmarked from a foreign country to contain a United States postmark, the envelope postmarked in 1987 raises questions of doubt as the applicant did not claim residence at this location until 1989.
4. [REDACTED] indicated that she met the applicant during the middle of 1981 when she "used to call him for taxi service. However, the applicant claimed on his Form I-687 application that he started driving a cab in 1982
5. [REDACTED] and [REDACTED] claimed to have known the applicant since 1982 and 1984, respectively; however, neither affiant provided an address for the applicant.

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).

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.