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U.S. Citizenship
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[Redacted]

FILE:

[Redacted]
MSC 02 180 60617

Office: NEW YORK

Date:

AUG 19 2008

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 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.

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because she determined that 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. Specifically, in her Notice of Intent to Deny (NOID), the director stated that at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer on June 16, 2005, he stated that he was absent from the United States from June 6, 1987 until August 16, 1987. The director noted that this statement was consistent with what the applicant showed on his Form I-687 Application to Adjust Status to Temporary Resident submitted to CIS on March 27, 1990. The director found that this absence was in excess of a single absence of 45 days. Therefore, the director found the applicant had not maintained continuous residence or continuous physical presence during the requisite period. The director granted the applicant 30 days within which to submit additional evidence in support of his application. In her decision, the director noted that her office received additional information from the applicant in support of his application. However, the director found that this additional evidence did not overcome her reasons for denial.

On appeal, the applicant submits a brief through counsel. Counsel asserts that the director failed to consider all of the evidence in the record. He states that the director's decision was not reasonably grounded in the record and argues that the applicant has satisfied his burden of proof.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 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 states 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 petitioner 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 or petitioner 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 or petition.

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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

Here, the submitted evidence is not relevant, probative and credible.

On March 27, 1990, the applicant applied for class membership in a legalization class-action lawsuit and submitted a Form I-687. On March 29, 2002, the applicant also filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

At part #35 of the applicant's Form I-687 submitted on March 27, 1990, where the applicant was asked to indicate all of his absences from the United States since his first entry, he indicated that he had one absence from the United States since he first entered, when he went to Pakistan to visit family from June 1987 until August 1987.

The record contains a second Form I-687 submitted by the applicant on September 24, 2004 pursuant to the CSS/Newman Settlement Agreements. At part #32 of this application, where the applicant was asked to show his absences from the United States he indicated that during the requisite period, he was absent from the United States from June to August 1987 when he went to Pakistan for a family visit.

Also in the record is a signed, sworn statement from the applicant dated June 16, 2005 when he appeared for his interview pursuant to his Form I-687 application. In this sworn statement, the applicant asserts that he, "left the United States for the first time on June 6, 1987 to travel to Pakistan to visit family. I returned to the United States on August 16, 1987." The AAO notes that this constitutes an absence of 71 days.

The record contains the following documents that are relevant to the applicant's residence in the United States during the requisite period:

1. An envelope addressed to the applicant in New York. The envelope bears a postmark that indicates it was sent on May 28, 1982.

2. An affidavit submitted by the applicant that is notarized on March 16, 2001. The applicant asserts that he has resided continuously in the United States since September 1981. He states that he was physically present in the United States from November 6, 1986 until May 4, 1988 except for a brief visit to Pakistan that occurred from July to August 1987. It is noted that the applicant previously stated on his Form I-687 that this absence occurred from June to August 1987.
3. A photocopy of the applicant's Social Security Earnings Statement that shows he had earnings in the United States in 1990 and then from 1994 to 2003. It is noted that this statement does not indicate that the applicant had Social Security taxed earnings during the requisite period.
4. An affidavit from [REDACTED] that was notarized on February 27, 2002. The affiant submits a photocopy of his New York Driver License with his affidavit. The affiant states he has known the applicant since November 1981. He asserts that he first met the applicant when the applicant painted the affiant's home. He states that he has been in touch with the applicant since November 1981. However, he fails to indicate whether he personally knows if the applicant resided in the United States during the requisite period. He does not state the frequency with which he saw the applicant during that time or indicate whether there were periods of time during the requisite period when he did not see the applicant. Because it is significantly lacking in detail, this affidavit can be accorded only minimal weight as proof that the applicant resided continuously in the United States for the duration of the requisite period.
5. An affidavit from [REDACTED] that was notarized on February 16, 2002. The affiant submits her Resident Alien Card with her affidavit. This card shows the affiant was admitted to the United States on October 4, 1980. The affiant states that she has known the applicant since October 1981. She goes on to say that she first met the applicant when he came to the affiant's home to paint. The affiant states that she is personally aware of the applicant's physical presence in the United States presence in the United States from November 6, 1986 until May 4, 1988. The affiant states that she was in touch with the applicant except for the period of time when the applicant went to Pakistan in July and August 1987. Though the affiant states that she was in touch with the applicant during the requisite period, she does not indicate the frequency with which she was in contact with him during the requisite period. She further fails to indicate how she is able to verify the date that when she first met the applicant or how she is certain of the dates of his absence in 1987. Because it is significantly lacking in detail, this affidavit can be accorded only minimal weight as proof that the applicant resided continuously in the United States for the duration of the requisite period.
6. An affidavit from [REDACTED] that was notarized on May 1, 1990. The affiant states that he has known the applicant for more than ten years. He asserts that on or about June 1987 the applicant traveled to Pakistan by airplane and that he returned to the

United States in August 1987. Though the affiant states he has known the applicant for more than ten years, he fails to indicate where he met the applicant or whether it was in the United States. He does not state that he personally knows that the applicant resided in the United States during the requisite period. This affidavit indicates that the applicant had an absence that is consistent with what the applicant stated on his two Forms I-687 and on his sworn statement. This indicates that the applicant may have had an absence from the United States that exceeded 45 days in length. Because of this and because this affidavit is significantly lacking in detail, it can be accorded very minimal weight as proof that the applicant resided continuously in the United States during the requisite period.

On August 24, 2005, the district director issued a Notice of Intent to Deny (NOID) to the applicant. She concluded that the applicant had failed to submit adequate, credible evidence of continuous, unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. She noted that the applicant's claimed absence from the United States from June 6, 1987 until August 16, 1987 exceeded a single absence of 45 days. She stated that this caused the applicant to have failed to have maintained continuous residence and continuous physical presence in the United States during the requisite period. The director provided the applicant with 30 days within which the applicant could submit additional evidence of having resided in the United States during the statutory period.

In response to the director's NOID, the applicant submitted the following:

1. A letter from the applicant that is dated September 20, 2005. In this letter, the applicant states that he does not recall stating that he left the United States on June 6, 1987 and then returned to the United States on August 16, 1987. He asserts that he stated that he left in late June 1987 and returned to the United States in early August 1987. He asserts that during his interview he stated that his absence from the United States was for less than two months. He states that he is attempting to contact the doctor who treated his wife at that time. He states that his journey to Pakistan was for a family emergency. He asserts that he has resided in the United States continuously since 1981.
2. A letter dated November 21, 2005 in which the applicant states he is enclosing a letter from a doctor who treated his wife in 1987.
3. A letter from the Hospital in Karachi, Pakistan that is dated October 10, 2005 and is signed by [REDACTED]. This letter states that the applicant's wife was admitted to the doctor's clinic on June 17, 1987. He states that he informed the family that the applicant's presence would aid in his wife's recovery. The letter goes on to say that the applicant came to Pakistan at the end of June in 1987. The letter further states that the applicant's wife was discharged from the clinic on August 4, 1987. Though this letter attests to the applicant's wife's dates as a patient in a clinic, it does not offer proof of the dates of the applicant's absence.

On August 2, 2006, the director issued her decision. She stated that though her office received evidence from the applicant on September 22, 2005 and November 25, 2005, this evidence was insufficient to overcome the grounds for denial as stated in her NOID. She stated that she continued to find that the applicant failed to meet his burden of proving that he resided in the United States for the requisite period. Specifically, she stated that the applicant failed to submit proof of the dates of his absence from the United States. She noted that though the applicant had submitted a Social Security Earnings Statement, this Statement did not contain evidence that the applicant had been present in the United States prior to 1990. She further stated that the affidavits the applicant submitted were not consistent. Therefore, she denied his application.

On appeal, the applicant submits a brief, though counsel. Counsel argues that the director's findings are not grounded in the record. He states that the applicant was smuggled into the United States both when he first entered and after returning from his absence in 1987. Therefore, he states that it is not reasonable to require the applicant to provide evidence of his entries into the United States at those times. He goes on to say that the director did not contact the affiants from whom he provided affidavits. Counsel further states that the director did not note the envelope that is date stamped 1982 and addressed to the applicant in her decision. Counsel argues that the director failed to show that the applicant's testimony during his interview was inconsistent with other evidence in the record.

Counsel's arguments are not persuasive. Though he is accurate in stating that it is not possible to produce evidence of a valid entry if an individual enters the United States without inspection, in this case the director stated that the applicant failed to produce evidence of his entries into or travel to Mexico before he entered the United States without inspection. The applicant failed to address this issue in his appeal. In response to the NOID and on appeal the applicant failed to provide evidence that overcomes his sworn statement from June 16, 2005 in which he stated that he was absent from the United States for 71 days. On appeal, the applicant submitted a brief prepared by his attorney that argues that the director's decision was not grounded in the record. However, the record shows that the applicant has stated that he had a single absence from the United States during the requisite period that exceeded 45 days. Therefore, the AAO finds that the director's decision was based on documents found in the record.

The AAO notes that the applicant's sworn statement in the record asserts that the applicant left the United States on June 6, 1987 and returned on August 16, 1987, a period of 71 days. His Forms I-687 submitted in March of 1990 and September of 2004 both show he was absent from June until August 1987. Though he has submitted a letter from his wife's physician that shows the dates that she was admitted and discharged from his clinic, this document does not prove when the applicant left and re-entered the United States as a result of her illness. Though the applicant argues on appeal that his absence from the United States was for less than 45 days, this is not consistent with what he has asserted to CIS on three previous occasions. This inconsistency undermines the credibility of the applicant's evidence and his claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 582.

The remaining supporting evidence, including an envelope postmarked in 1982 and affidavits that are not sufficiently detailed, as previously noted, and are not sufficient to overcome the inconsistencies and deficiencies in the record.

In summary, the applicant did not provide sufficient probative, credible evidence of having resided in the United States for the duration of the statutory period, nor did he provide any explanation as to why he was unable to provide such evidence. He provided an envelope postmarked in 1982 which is addressed to him. However, this envelope does not prove that the applicant continuously resided at this address. Further, it does not overcome his previous statements that he was absent from the United States for 71 days during the requisite period.

Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.