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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date:

DEC 16 2008

MSC 02 229 61977

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).

IN BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 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, the applicant asserts that prior to 1984, he had no visa and, therefore, obtaining any documents was almost impossible. The applicant states that the affidavits submitted establish his continuous residence in the United States “back to 1983 and before.”

“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 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. Section 1104(c)(2)(B)(i) of the LIFE Act; 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).

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. Here, the applicant has failed to meet this burden.

The record contains a copy of the applicant’s Syrian passport which reveals that on March 19, 1984, the applicant was issued a F-1 multiple entry non-immigrant visa in Damascus, Syria in order to attend the University of Toledo (Ohio). The record reflects that the applicant lawfully entered the United States with said visa on March 22, 1984. The record also reflects that the applicant lawfully entered the United States on September 15, 1986 and September 20, 1987.

The record reflects that on March 18, 1998, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant by his former spouse. Accompanying the Form I-130, is a Form I-485 application¹ and a Form G-325A, Biographic Information, signed by the applicant on January 20, 1998. The applicant indicated on his Form G-325A that he resided in his native country, Syria, from March 1983 until March 1984.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- An affidavit from [REDACTED] of Glendale, California who attested to the applicant’s residence in Tarzana, California from February 1981 to December 1988.
- An affidavit from [REDACTED] of Bolingbrook, Illinois, who indicated that he resided with the applicant in Toledo, Ohio in 1983 at [REDACTED] and in 1984 at [REDACTED] in Toledo, Ohio. The affiant asserted that during this period, the applicant was employed by P.H. & M.A. Catering business in Toledo and that the applicant departed the United States for a couple of weeks in 1984.
- A credit report from CBT Credit Services and Trans Union reflecting accounts opened since 1986 and the applicant’s place of residence [REDACTED] since March 1985.

¹ The applicant was assigned alien registration number [REDACTED].

The director, in issuing the Notice of Intent to Deny informed the applicant that the evidence presented with his application served only to establish his residence in the United States since 1984. The applicant was also advised of the Form G-325A signed on January 20, 1998 in which he indicated he resided on [REDACTED] in Damascus, Syria from March 1983 to March 1984. The director determined that this absence exceeded the 45-day limit for a single absence.

On appeal, the applicant asserts:

I had visited Syria in March of 1984 and [REDACTED] in Damascus is my family's address from March 1983 to March 1984. If G-325 of January 20th 1988 indicates of me living in Damascus during that time, it must be clerical or lawyer error. Contradictions on two applications to the same agency would be a very naïve decision on my part I could not have made.

The applicant submits copies of documents that were previously provided along with:

- An affidavit from [REDACTED] who indicated that he was introduced to the applicant in Ventura, California in 1981 and that a year later the applicant "moved back to Toledo, Ohio."
- A letter dated December 16, 2005, from the current manager of University Circle Apartment indicating she was unable to attest to the applicant's residence in the early to late 1980's because the former manager had been gone for over fifteen years, records were only kept for a period of seven years and in 2002, a fire destroyed the building where the records were stored.
- Affidavits from [REDACTED] and [REDACTED] and [REDACTED] who indicated that they have known the applicant since 1983 during the period he resided at [REDACTED] in Toledo, Ohio. The affiants asserted that they have remained in contact with the applicant since that time.

The statements issued by the applicant have been considered. The AAO, however, does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as he has presented contradictory documents, which undermines his credibility.

The applicant asserts that the Form G-325A signed January 20, 1998 contained a clerical or lawyer error. However, the applicant, in affixing his signature on the Form G-325A certified that the information he provided was *true* and *correct*, and no evidence has been provided from the lawyer who was representing the applicant during this proceeding to corroborate the applicant's statement. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Item 35 of the Form I-687 application requests the applicant to list all absences from the United States since January 1, 1982. The applicant only listed absences in 1986 and 1988; however, the applicant's passport reflects that he entered the United States in March 22, 1984 and September 20, 1987.

██████████ attested to the applicant's residence in Tarzana, California from 1981 to 1988. However, ██████████ indicated that the applicant resided with him in Toledo, Ohio in 1983 and 1984. Furthermore, ██████████ did not provide any details regarding the nature of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.

██████████ attested to the applicant's employment at P.H. & M.A. Catering business in Toledo, Ohio, and ██████████ and the remaining affiants all attested to the applicant's residence in Toledo, Ohio since 1982 or 1983. However, the applicant indicated on his Form I-687 application to have been self-employed and did not claim any residence in the state of Ohio on his Form I-687 application. This lessens the credibility of the affidavits submitted in an attempt to establish the applicant's continuous residence since before January 1, 1982 through March 21, 1984. The applicant, in affixing his signature on item 46 of the Form I-687 application, certified that the information he provided was *true and correct*.

The applicant claimed on his Form I-687 application that he was self-employed during the requisite period. However, the applicant provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i).

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, 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).

An absence of more than 45 days must be "due to emergent reasons" significant enough that the applicant's return "could not be accomplished." In other words, the reasons must be unexpected at the time of departure from the United States and of sufficient magnitude that they made the applicant's return to the United States more than inconvenient, but virtually impossible. That was not the applicant's situation in this case. The applicant's continued stay in Syria would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. Except for his own statement, the applicant does not provide any independent, corroborative, contemporaneous evidence to support his statements made on appeal. *Id.*

Assuming, arguendo, the applicant was residing in the United States prior to March 1983 his year-long absence (March 1983 to March 1984) from the United States exceeded the 45-day period allowable for a single absence and, therefore, interrupted his "continuous residence" in the United States. Accordingly, the applicant has failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and by the regulations, 8 C.F.R. §§ 245a.11(b) and 245a.15(c)(1). Consequently, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial.

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