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FILE: [REDACTED]
MSC 03 242 61252

Office: NEW YORK Date: DEC 29 2008

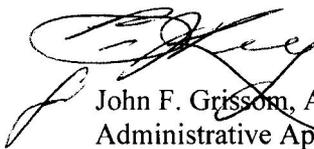
IN RE: Applicant: [REDACTED]

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).

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, counsel asserts that the director failed to consider the totality of the evidence and testimony given by the applicant. Counsel argues that the director failed to recognize the difficulty for the legalization applications to obtain primary documentary evidence to support their application.

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 and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant only provided an affidavit from a relative, [REDACTED], in British Columbia, Canada, who attested to the applicant's visit from May 15, 1987 to June 15, 1987.

The applicant also submitted an affidavit from [REDACTED]; however, the affidavit has no probative value as the affiant attested to the applicant's residence in the United States subsequent to the requisite period.

On June 13, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavit has not submitted sufficient evidence to establish continuous unlawful residence during the requisite period. The director advised the applicant that because [REDACTED] did not reside in the United States he could not attest to the applicant's residence in the United States during the requisite period. The applicant was further advised that he failed to provide evidence to support his claim to have traveled to Canada in 1987 and his entry into the United States with a nonimmigrant visa in October 1981.

Counsel, in response, asserted that the applicant had submitted affidavits properly prepared and executed in support of his continuous residence during the requisite period. Counsel provided a telephone number for [REDACTED] and documents establishing the affiant's residence in Canada. Counsel also provided a copy of the Proposed Class Action Settlement (*Catholic Social Services, Inc. v. Ridge*).

It is noted that the director, in issuing the Notice of Intent to Deny, determined that the affidavit from [REDACTED] was not supported by documentary evidence such as identification, photos, or correspondence and proof of his residence in Canada for the time indicated. However, there is no burden on an affiant to establish his or her identity. The regulation at 8 C.F.R. § 245a.12(e) specifies that the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

In denying the application, the director noted that on September 27, 2007, [REDACTED] was contacted and he indicated that he knew the applicant from India and saw the applicant in India in 1979 and again in Canada in 1990 or 1991. The affiant also indicated that he did not prepare the affidavit, but he did sign it. The director determined that the affiant's statement contradicted his affidavit which attested to the applicant's visit from May 15, 1987 to June 15, 1987 at his residence in Canada.

On appeal, counsel asserts that the director did not provide any detail as to how the telephonic interview was conducted and whether an interpreter was used during the interview to ensure the [REDACTED] understood and answered the questions correctly. Counsel asserts that the director has misquoted and altered the statement made by the affiant.

It is not the director's responsibility to provide an individual with an interpreter. If the affiant had felt uncomfortable without the presence of an interpreter, he could have requested that the interview be stopped and rescheduled. Nevertheless, counsel, provides no documentary evidence to support his assertion. **The unsupported assertion of counsel does not constitute evidence.** *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, counsel asserts that the applicant has submitted relevant, probative and credible evidence and affidavits to support his claim.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. See *Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988.

The applicant claims to have been residing in the United States since 1981, but only provided one affidavit from an individual in an attempt to attest to his continuous residence in the United States *during the requisite period*. This affidavit, as previously mentioned by the director, lacks probative value as the affiant, [REDACTED], did not reside in the United States and, therefore, can only attest to the applicant's visit to Canada in 1987.

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, the applicant has not met his burden of proof. The applicant has not provided any documentation to indicate where he was employed or resided during the period in question. The applicant's reliance on minimal documentation raises questions regarding the credibility of the claim. It is concluded that he has failed to establish continuous

residence and physical presence in the United States for the requisite period. Therefore, 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.