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

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PUBLIC COPY

[REDACTED]

FILE:

MSC 01 286 60037

Office: NEW YORK

Date:

JAN 15 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. The file has 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 summarily dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel makes several assertions. Counsel asserts that the director's decision is not supported by the facts and that "consideration of documents would differ the outcome of the matter." Counsel also contends that the director's decision is arbitrary, capricious and "bad in law and precedents" because the director failed to examine the evidence in the record. Counsel maintains that the submitted evidence has established the applicant's claim of continuous residence during the requisite period. Finally, counsel contends that the director did not carefully examine the submitted evidence and affidavits regarding the applicant's arrival date. No brief and/or additional evidence was submitted.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 or 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 entered the United States prior to January 1, 1982, and whether he continuously resided in the United States in an unlawful status since such date through the May 4, 1988.

In the Notice of Intent to Deny, dated May 19, 2007, the director determined that the applicant failed to meet his burden in establishing his entry prior to January 1, 1982, and continuous unlawful residence in the United States since such date through May 4, 1988. The director stated that the applicant did not submit any primary or secondary evidence to corroborate his claim. Although the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) to the instant application, it is harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(f). The director provided the applicant 30 days to provide a rebuttal.

In rebuttal, the applicant maintains that he first entered the United States in September 9, 1981, from Canada without inspection, and continuous unlawful residence since that date through May 4, 1988. He submitted additional evidence in support of his claim.

In the Notice of Decision, dated June 18, 2007, the director determined that the submitted evidence failed to overcome the basis for denial. The director denied the instant application based on the reasons stated in the NOID.

In support of his claim of entry into the United States prior to January 1, 1982, and continuous unlawful residence from such date through May 4, 1988, the applicant submitted a copy of his passport. His passport includes a photocopy of an I-94, Departure Record. The I-94 indicates that the applicant was admitted into the United States on dated September 21, 1988. It is evident from the record that the applicant entered the United States in September of 1988. The applicant has also submitted numerous affidavits attesting to his residence in the United States from 1988 through the present.

It is not clear whether the applicant entered the United States prior to January 1, 1982, and continuously resided in an unlawful status up through May 4, 1988. In a June 7, 2007, rebuttal to the NOID, the applicant stated that he entered the United States on September 9, 1981. In support of the

applicant's entry into the United States prior to January 1, 1982, the applicant submitted the following affidavits:

The applicant submitted a June 26, 2001, subscribed and sworn affidavit of witness by [REDACTED]. The affiant stated she has personal knowledge that the applicant resided in the United States from November 1981 to the present. The affiant stated that she passed by his work place starting from November 1981 until late 1985. The affiant provided her address of residence. Although not required, the affidavit did not include any supporting documentation of the affiant's identity or presence in the United States. The affiant did not provide any specific details to corroborate the applicant's claim of entry into the United States prior to January 1, 1982.

The applicant also submitted a June 5, 2007, sworn and subscribed affidavit of witness by [REDACTED], who stated that the applicant resided at [REDACTED] New York, in October 1981. The affiant also stated that he met the applicant's wife on January 15, 1988 in New York. The affiant provided his address of residence, telephone number and a copy of his New York identification card.

The applicant also submitted a March 9, 2006, subscribed and sworn affidavit by [REDACTED]. The affiant stated that he has personal knowledge the applicant resided in the United States since December 1980 through March 2006. The affiant also stated that he had a retail business at the time and the applicant was a business associate. The affiant provided his address of residence. The affiant has contradicted the statement of the previous affiants, as well as that of the applicant. The affiant stated the applicant resided in the United States since December 1980, whereas the applicant and previous affiants stated 1981. There is no explanation to reconcile this discrepancy, and therefore, brings into question the credibility of the applicant and his affiants.

Upon review of the instant application, the AAO finds that multiple discrepancies exist in the record. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO agrees with the director and finds that the applicant has failed to provide relevant, probative, and credible evidence. Other than three inconsistent affidavits, the applicant has not provided any credible evidence to support his claim of entry into the United States prior to January 1, 1982. The absence of consistent supporting documentation to corroborate the applicant's claim of continuous unlawful residence since before January 1, 1982, through May 4, 1988, seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and

amenability to verification. Given the lack of credible evidence and discrepancies, it is concluded that he has failed to overcome the basis for the director's denial.

Based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.