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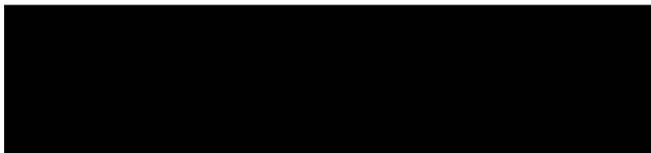
U.S. Department of Homeland Security
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U.S. Citizenship
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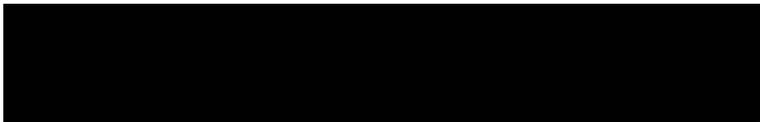
Office: CINCINATTI

Date: JUL 10 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:



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 District Director, Cincinnati, Ohio, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the evidence of record did not establish that the applicant entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, counsel for the applicant asserts that the interviewing officer ignored the evidence in the record. Counsel asserts that the interviewing officer “took an irrelevant discrepancy and twisted it into a lynchpin of non-reasoning.” Counsel asserts that the applicant has responded to the interviewing officer’s concerns about the evidence in the record. Counsel asserts that this is all “much ado about nothing.” Counsel asserts that the applicant has submitted affidavits, sworn letters, and leases “in an attempt to comply with the Herculean task of trying to prove where he was twenty five years ago.”

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

On March 11, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On September 2, 2004, the applicant appeared for an interview based on his application.

On September 3, 2004, the director sent the applicant a Notice of Intent to Deny (NOID) the application. The director noted abnormalities in several affidavits the applicant submitted in support of his application. The director noted that affidavits from [REDACTED] a patron at the restaurant where the applicant ate and sold merchandise, and [REDACTED] of the Don Jin Trading Company, contained a blank space where the applicant’s name is typed in, that the applicant’s name is typed in with a different font, and possibly with a different typewriter than the rest of the affidavit. The director questioned why two people who knew the applicant personally and who had agreed to vouch for his presence, did not type the applicant’s name in when they typed the affidavits. The director also noted that the applicant submitted an affidavit from [REDACTED] from the Masjid Malcolm Shabazz mosque. The director stated that the mosque was contacted and that its spokesperson said that the mosque had heard about these affidavits through other inquiries and that the mosque had not issued the affidavits and did not know [REDACTED]. The director stated that Citizenship and Immigration Services (the Service) has samples of [REDACTED]’s signature on many affidavits and that each sample is different and apparently each affidavit is not signed by the same person even though each claims to be [REDACTED]. The director concluded that the evidence of record did not establish that the applicant entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

In response, counsel for the applicant submitted an explanation of the concerns mentioned in the NOID and a letter from [REDACTED].

On March 24, 2006, the director denied the application, finding that the evidence of record did not show that the applicant entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988. The director found that the applicant was not eligible for the benefit sought and that the additional evidence submitted by the applicant did not show he was eligible.

On appeal, counsel asserts that the interviewing officer ignored the evidence in the record. Counsel asserts that the interviewing officer “took an irrelevant discrepancy and twisted it into a lynchpin of non-reasoning.” Counsel asserts that the applicant has responded to the interviewing officer’s concerns about the evidence in the record. Counsel asserts that this is all “*Much Ado About Nothing*.” Counsel asserts that the applicant has submitted affidavits, sworn letters, and leases “in an attempt to comply with the Herculean task of trying to prove where he was twenty five years ago.”

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.

After a thorough review of the file, the AAO finds that the applicant has sufficiently explained why the abnormalities in the affidavits from [REDACTED] and [REDACTED] do not warrant a denial of his application. The applicant was confronted with the abnormalities and adequately addressed them.

The application cannot be approved, however, because the applicant has not established his entry to the United States before January 1, 1982, and his continuous unlawful residence from before January 1, 1982, through May 4, 1988.

The only documentation in the record to support the applicant’s assertion that he was here during the requisite time period consists of the following affidavits:

- A notarized letter dated January 8, 1992, from [REDACTED] typewritten on Dong Jin Trading Co., Inc. letterhead. [REDACTED] simply certifies that the [REDACTED] M.L. was a regular customer of his since 1981 and that he purchased different merchandise from his store. This letter provides no detail of the affiant’s personal knowledge of the applicant’s continuous residence and continuous physical presence in the United States. Furthermore, the affiant does not describe how he dated his acquaintance with the applicant, or how frequently he saw the applicant;
- A notarized letter dated January 14, 1992, from [REDACTED] l. [REDACTED] certifies that he has known [REDACTED] since 1981. [REDACTED] states that the applicant

is a salesman who often eats in his restaurant with his friends and co-workers. He states that over the years they have become pretty good friends. He states that the applicant is a very honest, reliable, courteous, and trustworthy individual. Again, the affiant provides no meaningful detail of his personal knowledge of the applicant's entry into the United States, or his continuous residence and continuous physical presence. He does not describe how he dated his acquaintance with the applicant or how frequently he saw the applicant from 1981 until the date the letter was written;

- A notarized letter from [REDACTED] the applicant's friend. Ms. [REDACTED] states that she has known the applicant since 1981 when he was living in Harlem and was selling African products. She states that she was impressed with the quality of the products and started a relationship with the applicant and his wife. She states that she was invited to their home for dinner several times and on other occasions she invited them to her home. **She states that as a musician she sometimes had them as guests at her concerts.** She states that the applicant moved to Brooklyn around 1996 and later moved to Ohio. Ms. [REDACTED] provides no meaningful details about his residence in the United States. She claims no knowledge of the applicant's arrival in the United States. She does not date her initial meeting with the applicant and does not state the address where she went to have dinner at his home or the approximate dates when she had dinner there. She does not state how frequently she saw the applicant between 1981 and 1996;
- A letter from [REDACTED], from the Public Information section of the Malcolm Shabazz mosque in New York, New York. Mr. [REDACTED] stated that the **applicant is a member** of the Muslim Community and that he has been here since January of 1981. Mr. [REDACTED] stated the applicant attended Friday Jumah Prayer Services and other Prayer Services at the mosque. This letter can be given little evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, Mr. [REDACTED] does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the mosque. Furthermore, the information in the letter cannot be verified;
- An "Affidavit of Witness" form, dated February 12, 1992. The form, signed by [REDACTED] lists the applicant's address in New York from November 1981 through the date the form was notarized, and is consistent with information on the applicant's Form I-687. The form language states that the affiant has personal knowledge that the applicant has resided in the United States at the address listed. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____." [REDACTED] added "We

met at [REDACTED] and [REDACTED], where he was selling African clothes.” This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period. [REDACTED] fails to indicate any personal knowledge of the applicant’s claimed entry to the United States or of the circumstances of his residence other than his address. In addition, there is no evidence that the affiant resided in the United States during the requisite period; and,

A letter from the applicant’s brother [REDACTED], stating that the applicant visited him and stayed with him in Canada from December 20, 1987, until January 6, 1988. This letter is not probative of the applicant’s continuous residence and physical presence in the United States during the requisite time period.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant’s residence and presence in the United States for the requisite period. [REDACTED], and [REDACTED], who claim to have knowledge of the applicant’s continuous residence and continuous physical presence in the United States since 1981, provide no meaningful details about the applicant’s residence in the United States. They claim no personal knowledge of the applicant’s arrival in the United States. They do not date their initial meeting with the applicant, explaining how they recall specifically the date when they first met him. [REDACTED]’s fill-in-the-blank affidavit contains no details regarding any relationship with the applicant and no meaningful details about the circumstances of the applicant’s residence during the requisite period. In addition, although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The only other documentation in the record is a residential lease dated February 2, 1990, to February 3, 1991. This evidence does not address the applicant’s qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which he claims to have last entered the United States without inspection on December 20, 1987, and to have resided for the duration of the requisite period in New York and Ohio. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Therefore, 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.