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U.S. Citizenship
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Services

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[Redacted]

FILE:

[Redacted]

Office: HOUSTON

Date:

JUL 11 2008

MSC 02 113 64627

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. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Houston, Texas, and is now before the Administrative Appeals Office 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 since before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the director, in denying the application, abused her discretion by “failing to properly weigh positive factors” and by making “improper assumptions based on the facts presented which were outside the scope of the authority granted to the District Director.” Counsel submits a brief and additional documentation in support of the appeal.

An applicant for permanent resident status 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; 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 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 Citizenship and Immigration Services (CIS) 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. 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.

In an affidavit to determine class membership, which he signed under penalty of perjury on November 7, 1989, the applicant stated that he entered the United States in August 1981, when he crossed the border without a visa. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on November 11, 1989, the applicant admitted to one absence from the United States, from July to August 1987, to visit family in Pakistan. The applicant also stated that from August 1981 to December 1985, he lived at [REDACTED] in Chicago, Illinois, and from January 1986 to September 1989, he lived at [REDACTED] in Chicago. The applicant also stated that he was a self-employed window cleaner from August 1981 to September 1986, and worked in "finishing" at a Dunkin Donuts in Chicago from October 1986 to September 1989.

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

1. A May 6, 1982, letter from Variety International Imports, in Chicago, signed by [REDACTED], in which he certified that the applicant worked for the company as an export/import clerk. The letter did not identify the dates of the applicant's employment, and did not indicate whether the information was taken from company records, as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, according to the applicant's Form I-687 application, he worked as a self-employed window washer during this period. Additionally, he did not identify Variety International Imports as one of his employers.
2. A May 22, 1985, letter from Dinos Restaurant in Chicago, signed by [REDACTED] who identified herself as the restaurant manager, and recommending the applicant for employment. Ms. [REDACTED] stated that the applicant had worked as a bus person for the restaurant from February 15, 1982, to November 1984. The letter did not indicate the applicant's address at the time that he allegedly worked for the restaurant, as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, the applicant stated that he worked as a self-employed window washer during this period, and did not identify Dinos Restaurant as one of his employers on his Form I-687 application.
3. A May 7, 1986, letter from Prince Auto Repair and Body Shop in Chicago, signed by [REDACTED], assistant manager, in which she stated that official company records indicate that the applicant was employed by the company "on" June 1983 to November 1985. The letter did not indicate the applicant's address during the time that he worked for the company, as required by 8 C.F.R. § 245a.2(d)(3)(i). The information in this letter, furthermore, is inconsistent with the applicant's statements on his Form I-687 application in which he stated that he was a self-employed window washer from August 1981 to September 1987, and did not identify Prince Auto Repair and Body Shop as an employer during the qualifying period.
4. A form letter from Motor/Age. The letter is purportedly addressed to the applicant in Chicago and dated May 24, 1984. We note that the apartment address is atypically placed with the city and state on the last line. The city and state are also all in lower case.
5. An August 13, 2003, affidavit from [REDACTED] in which he stated that the applicant was a guest at his home in Chicago for his son's birthday on August 15, 1984. The affiant did not attest that the applicant resided in the United States during the qualifying period.
6. An October 10, 1984, letter from American Vision Centers, addressed to the applicant in Chicago, stating that the applicant was examined on September 28, 1984. The letter was signed by "[REDACTED]" and informed the applicant that he needed glasses and to call the office as soon as possible. The

letter contains neither an address nor a telephone number. Further, the structure of the language in the letter is suspect, referring to the applicant in both the second and third person.

7. An August 14, 2003, "affidavit" from [REDACTED] in which he stated that the applicant is his "cousin's brother-in-law" and that he invited the applicant to attend his birthday in Chicago on March 13, 1985. Mr. [REDACTED] did not state that the applicant resided in the United States during the qualifying period.
8. A copy of a letter containing a training schedule from Allen Institute Training, showing dates in July and August 1985. The letter is dated June 4, 1985, and addressed to the applicant in Chicago.
9. An April 14, 2003, letter from Dunkin' Donuts at 101 W. Division Street in Chicago, signed by [REDACTED], who identified himself as president of Sheila, Inc., dba Dunkin' Donuts. Mr. [REDACTED] certified that, "during the year 1986-87," the applicant "was visiting us to clean window glasses." Mr. [REDACTED] did not state how he dated the applicant's work with the company. We note that the applicant stated that he worked for Dunkin' Donuts in "finishing."

In a June 27, 2005, letter accompanying the applicant's response to a request for additional evidence, the applicant's then counsel stated that the applicant left the United States on July 15, 1987. During his March 1, 2006, interview, the applicant stated that he committed to his wife over the phone in January 1985, then met her in person in August 1985 in Pakistan. The applicant stated that he left Chicago in July 1985 and drove to Mexico before flying out of Mexico City to Pakistan.

In a Notice of Intent (NOID) dated May 1, 2006, the director advised the applicant that the district office was unable to verify his employment with Variety International Imports and could not verify the information provided in the letter from American Vision Centers. The director also questioned the letter from Motor/Age, noting the letter appeared in two different fonts. The director also informed the applicant that he signed a statement indicating that he left the United States in July 1985; however, his lawyer stated that he left in July 1987. The applicant was advised that he had 30 days in which to rebut the findings of the notice and to submit evidence to support approval of his application. The director denied the application on July 17, 2006, indicating that the applicant had failed to respond to the NOID.

On appeal, counsel stated that the applicant timely responded to the NOID, and submitted evidence that the district office received correspondence from prior counsel on May 12, 2006. Counsel provides what he stated was the applicant's response to the NOID, including a May 18, 2006, letter from prior counsel, in which he stated that there is no inconsistency in the applicant's statements.

Prior counsel stated that the employment letter from Variety International Imports was provided to the applicant as the company was going out of business, and that the owner "could not recall" when the applicant started working there and "intentionally left the space blank" for the applicant to complete. Prior counsel stated that the applicant did not wish to alter the document and therefore did not fill in the blanks. Nothing in the record supports this statement by prior counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Prior counsel also stated that the applicant was attempting to find information for [REDACTED]. Prior counsel also asserted that the applicant stated that he left the United States on only one occasion, in July 1985, and

that other travel was with advance permission. Prior counsel stated that there is no inconsistency between his statement and that of the applicant.

On appeal, in addition to previously submitted documentation, the applicant submits the following additional documentation:

10. A copy of an apartment lease, showing the applicant as one of the lessees for [REDACTED] at [REDACTED] in Chicago.

11. A copy of an envelope addressed to the applicant at number [REDACTED] in Chicago.

Other documentation submitted by the applicant is dated subsequent to the qualifying period and therefore is not probative in establishing the applicant's continued residence in the United States during the relevant period.

Counsel asserts on appeal that the director did not question the applicant's credibility or challenge the authenticity of his documentation. Counsel also asserts that the basis of the director's denial of the applicant's application was the apparent failure to respond to a request for evidence. Counsel's argument is without merit. The director's decision states that the denial was based on the findings set forth in the NOID, and the NOID addresses the deficiencies in the applicant's evidence.

The applicant's credibility is clearly at issue. On his Form I-687 application, the applicant stated that he left the United States in July 1987, and that this was his only absence from the United States during the qualifying period. This statement was confirmed by prior counsel in his June 27, 2005, letter. However, on his Form G-325A, Biographic Information, which he signed under penalty of perjury on January 7, 2002, the applicant stated that he was married in Hyderabad, Pakistan, on January 25, 1985. In his March 1, 2006, interview, the applicant stated that he committed to his wife over the phone in January 1985, then met her in person in August 1985 in Pakistan. He alleged that he left the United States in July 1985.

The applicant also alleged on his Form I-687 application that he worked as a self-employed window washer from 1981 to 1986. However, he submitted letters indicating that during this time he was employed in various businesses, including an import/export company, a restaurant, and an automobile repair shop as a car washer.

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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies in his statements regarding his departure from the United States or his employment. Therefore, the reliability of the remaining evidence offered by the applicant is suspect. Given this, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

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.