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

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[Redacted]

FILE: [Redacted] MSC 01 275 60278

Office: NEW YORK

Date: **JUL 17 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. 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.

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, New York, 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 states that the director's denial of the application was arbitrary and an abuse of discretion. 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.

On a form to determine class membership, which he signed under penalty of perjury, and in a June 23, 2001, affidavit, the applicant stated that he first entered the United States in January 1980, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on April 6, 1990, the applicant stated that he left the United States once during the qualifying period, from August 20 to September 26, 1987, when he traveled to Pakistan for a family emergency. The applicant stated that he lived at [REDACTED] in Brooklyn, New York from November 1980 to December 1983, and at [REDACTED] in Brooklyn from April 1984 to December 1989. The applicant also stated that he worked as a messenger at [REDACTED] in Brooklyn from January 1980 to October 1983; at a Citgo Gas Station, 3035 White Plain Road in Bronx, New York from November 1983 to October 1987; and at a Citgo Gas Station, 366 Avenue Y, West 3, in Brooklyn from October 1987 to December 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 copy of a February 29, 1990, sworn statement from [REDACTED], in which he stated that the applicant worked for him from January 1980 to October 1983. The letter does not indicate whether the information regarding the applicant's employment was taken from company records or the applicant's address at the time he worked for [REDACTED], as required by 8 C.F.R. § 245a.2(d)(3)(i). The applicant did not submit documentation, such as pay stubs, canceled checks, or similar documentation to corroborate his employment with [REDACTED].
2. A copy of an April 5, 1990, affidavit from [REDACTED] in which he stated that the applicant had lived in the United States since January 1980. Mr. [REDACTED] did not indicate the basis of his knowledge about the applicant's continued residence in the United States. Mr. [REDACTED] also stated that the applicant left the United States on August 20, 1987, and returned on September 26, 1987. In a copy of an April 2, 1990, sworn statement, [REDACTED] stated that the applicant resided at his address, [REDACTED] in Brooklyn from April 1, 1984, to December 12, 1989.
3. A copy of a February 29, 1990, sworn statement from [REDACTED] in which he stated that the applicant rented a studio apartment at [REDACTED]'s house at [REDACTED] in Brooklyn from November 1980 to December 1983. The applicant submitted no documentary evidence, such as a lease agreement, rent receipts, or similar documentation to corroborate his residence at this address.
4. A copy of a February 29, 1990, sworn statement from [REDACTED] DDS, in which he stated that the applicant was his patient from April 1981 to July 1983. The doctor did not indicate whether the information provided was taken from the applicant's medical records.
5. A copy of a June 6, 2001, notarized "affidavit" from [REDACTED], in which he stated that he had known the applicant for at least 15 years, and that he met him while the applicant was working as a gas station attendant at the Citgo Gas Station at [REDACTED] in Brooklyn. Mr. [REDACTED] did not state how he dated his acquaintance with the applicant.

In a Notice of Intent to Deny (NOID) dated September 21, 2006, the director advised the applicant that the district office was unable to confirm the information provided by those submitting statements on his behalf. We note that two of the statements, from [REDACTED] and [REDACTED], that the district office was unable to verify were submitted in support of a Form I-687 application that the applicant filed on June 16, 2004,

pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements). The appeal of the director's denial of that application is the subject of a separate decision issued this date.

In her May 22, 2004, affidavit, [REDACTED] stated that she first met the applicant in June 1981 in Brooklyn when he was lost and looking for directions, and that they have since become friends. In her May 22, 2004, affidavit, [REDACTED] stated that she met the applicant at a restaurant in October 1981, and that they have since become friends.

In response to the NOID, counsel provided updated contact information for [REDACTED], and [REDACTED]. Counsel also stated that the applicant was unable to locate [REDACTED] or Dr. [REDACTED], and that CIS should take into consideration the length of time that has passed, making it difficult for the applicant to locate people who knew him during the qualifying period. Counsel also asserted that, based on a 1989 policy memorandum from the former director of the Eastern Regional Processing Facility of the Immigration and Naturalization Service (legacy INS), the applicant's application should receive minimal scrutiny because the applicant's affidavits were credible and verifiable. Counsel further asserted that the applicant's evidence had been treated differently from others in the same situation who submitted similar evidence.

The director determined that the applicant had failed to establish his continued residence in the United States and denied his application for adjustment of status on November 1, 2006. The director noted that [REDACTED] denied meeting the applicant in 1980, as he indicated in his 1990 affidavit, and that [REDACTED] told the interviewing officer that he met the applicant in 1984 when the two were roommates on [REDACTED] t. The director also noted that the district office was unable to verify information from [REDACTED] or [REDACTED].

On appeal, counsel states that the interviewing office apparently misunderstood [REDACTED] and submits a December 16, 2006, sworn statement from [REDACTED] in which he reiterated that he had known the applicant since 1980. The record does not contain any notes from the interviewer memorializing the interview with [REDACTED]; as such, there is no evidence that [REDACTED] made contradictory statements regarding his knowledge of the applicant. However, [REDACTED] did not indicate his relationship with the applicant or the basis of his knowledge of the applicant's residency in the United States prior to becoming his roommate in 1984.

Counsel asserts that the applicant provided affidavits that were credible and verifiable, and that the director "arbitrarily treated this Applicant's evidence different than other applicants who were in the same situation and submitted similar evidence." Counsel, however, submitted no documentation or other evidence to support this assertion. 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).

Additionally, counsel suggests that the delay by CIS in attempting to contact those submitting statements on behalf of the applicant, contributed to the district office's inability to verify their information. Nonetheless, the affiants failed to provide sufficient details to substantiate the information they provided without further verification. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the

documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant submitted no contemporaneous documentation to corroborate his employment or his residence addresses during the qualifying period. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he 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.

The record reflects that on July 28, 2000, the applicant was convicted in the Criminal Court of New York of a violation of New York Penal Law section 240.20, disorderly conduct. He was ordered to attend a treatment readiness program and placed on probation for one year. Docket no. [REDACTED] 2.

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