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[REDACTED]

FILE: [REDACTED]
MSC 03 239 61303

Office: SAN FRANCISCO

Date: **JUL 21 2008**

IN RE: Applicant:

[REDACTED]

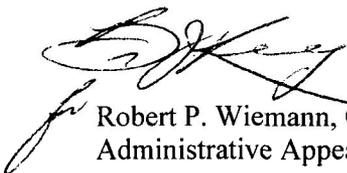
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554. 114 Stat. 2763 (2000).

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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be 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 for the applicant states that the director erred in denying the application because the director failed to give adequate weight to the evidence submitted. Counsel further asserts that the applicant submitted sufficient credible evidence to establish eligibility.

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 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.

In the Notice of Intent to Deny (NOID) / Request of Evidence, dated March 24, 2005, the director stated that the applicant failed to submit sufficient evidence demonstrating that he entered the United States before January 1, 1982, his continuous unlawful residence and his physical presence in the United States, during the requisite period, and evidence that he is admissible. The director also requested the applicant's school records from India and the United States. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated June 18, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant provided affidavits from [REDACTED] and [REDACTED] and a declaration of presence from [REDACTED]; however the affidavits lacked specifics and that the applicant failed to submit corroborating evidence.

The record reflects that the applicant had submitted:

- 1) An letter from [REDACTED], MD, dated December 9, 2003, stating that he has known the applicant since 1981;
- 2) An affidavit from [REDACTED], sworn to on February 16, 2004, stating that he has been running a restaurant in California, and that the applicant visited his restaurant once a month from 1981 until 1991;
- 3) An affidavit from [REDACTED], sworn to on February 2004, attesting to knowing the applicant in the United States since 1981; and,
- 4) A Declaration of Presence, from [REDACTED], stating that he has known the applicant in the United States since March 1987.

It is also noted that the applicant submitted 11 certificates for various courses completed between 1992 and 1995. These documents, however, do not relate to the requisite period.

On appeal, counsel for the applicant states that the applicant has met his burden of proof as he has submitted sufficient evidence to establish eligibility. Counsel states that the director failed to

consider the fact that the applicant did not attend school and, therefore, no school records are available. Counsel does not submit additional evidence, on appeal.

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. The applicant submitted a letter, two affidavits, and a declaration of residence as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

The applicant has submitted letters and affidavits in support of his application, however, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. None of the affiants stated how they dated their acquaintance with the applicant. Mr. [REDACTED] states that the applicant visited his restaurant once a month from 1981 until 1991, but does not provide any substantiating documentation to support his assertion. Mr. [REDACTED] and Mr. [REDACTED] state that they have known the applicant since 1981, but do not indicate the basis for their assertions that the applicant has resided continuously in the United States since January 1, 1982. Mr. [REDACTED] states only that he has known the applicant in the United States since March 1987.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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.

In addition, although the applicant claims that he has resided in the United States since March 1981, the applicant has not provided any contemporaneous evidence in support of his claim. It is reasonable to expect that the applicant would be able to provide some reliable contemporaneous documentation if he has been in the United States since 1981 as he claims. Contrary to counsel's assertion, it is unlikely that the applicant, who was only eleven years old in 1981 when he claimed he entered the United States, would not have attended either primary or secondary school in the United States, and therefore be able to provide his school records in support of his claimed residence in the United States. In addition, the applicant has provided questionable documentation. It is noted that the applicant stated in an "Affidavit of Circumstances," dated September 10, 1991, that he entered "on mother's passport and visa." But he stated in an April 28, 2005 letter that he came to the United States with his father. The applicant has not explained this discrepancy. Also, the applicant stated in a May 27, 2003 Declaration in Support of Amnesty Application Under Life Act, "I do not have a passport because I lost it." The April 28, 2005 letter, however, states "I lost my passport due to burglary in my home in August 1999 in Oakland, California." (emphasis added.) The applicant also stated in his Declaration that he "worked for mother motel" as an assistant manager who managed hotel operations from April 1991 to January 1997. That job, however, is not listed on his Form I-687 which was signed on September 10, 1991. Moreover, the applicant stated on his Form G-325A, dated March 10, 2003, that his mother resided in Bombay. Again, the applicant has not clarified this discrepancy. Finally, counsel states on appeal, that

the applicant was hired as a technician in 1997 based on his experience at Whole Earth Excess. The applicant, however, did not list that employment on his Form I-687, and does not provide an employment affidavit, or pay checks, or employment documentation to establish that the claimed employment.

This lack of reliable contemporaneous corroborative evidence and unexplained discrepancies in the record cast doubt on whether the applicant has resided in the United States since 1981 as he claims. 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 discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect. 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 from prior to January 1, 1982, through May 4, 1988.

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.