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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 02 211 64602

Office: WEST PALM BEACH

Date: NOV 20 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.

A handwritten signature in black ink, appearing to read "J. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, West Palm Beach, Florida, and is now before the Administrative Appeals Office (AAO) 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 from before January 1, 1982, through May 4, 1988.

On appeal, the applicant reasserts the veracity of his claim to have resided and worked since 1981 in Chicago. The applicant asserts that he has submitted sufficient evidence to establish continuous residence in the United States during the requisite period. The applicant submits affidavits, in their original format, in support of the appeal.

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. Section 1104(c)(2)(B)(i) 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 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.

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. Here, the applicant has failed to meet this burden.

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

- Photocopied affidavits from acquaintances, [REDACTED] and [REDACTED] who attested to the applicant's Chicago residence at [REDACTED] from December 1981 to June 1988.
- A photocopied letter from a representative of Calo-Restaurant & Lounge, Inc. in Chicago, Illinois, who attested to the applicant's employment as a busboy at Calo Pizza from 1982 to 1988.
- A photocopied letter dated April 14, 2002, from [REDACTED] manager of Calo-Restaurant & Lounge, Inc. who attested to the applicant's employment from January 15, 1982 to July 1985 and from June 1986 to December 1988
- A photocopied affidavit from [REDACTED] of Chicago, Illinois, who indicated that he has known the applicant since the applicant moved to Chicago in January 1982 and attested to the applicant's residence at [REDACTED]. The affiant asserted that he resided in the same neighborhood as the applicant.
- A photocopied affidavit from [REDACTED] of Chicago, Illinois, who indicated that she has known the applicant since the applicant moved to Chicago in January 1982. The affiant asserted that she was a coworker of the applicant at Calo Pizza.

On August 1, 2005, the director issued a notice requesting the applicant to submit evidence of his 1981 entry into the United States as well as evidence of his continuous residence in the United States during the requisite period. The applicant was granted 30 days in which to submit the requested documentation. The applicant, however, failed to respond to the notice. The director, in denying the application, determined that the affidavits submitted were vague and lack corroborating evidence.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988. Specifically:

1. The employment letters from Calo-Restaurant & Lounge, Inc. failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the

same regulations, the affiants also failed to 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.

2. The letters from Calo-Restaurant contradict as the initial letter mentioned no break in employment during the requisite period. Mr. [REDACTED], in his letter, did not attest to the applicant's employment at the restaurant from August 1985 to May 1986. Furthermore, the applicant claimed on his Form I-687 application that his employment at Calo-Restaurant commenced in February 1982 and ended February 1988.
3. [REDACTED] and [REDACTED] attested to the applicant's residence in Chicago since December 1981. However, neither affiant provided any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. 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.
4. [REDACTED] indicated that she was a coworker of the applicant at Calo-Restaurant, but failed to provide the dates of employment.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously from before January 1, 1982, through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

*Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between

January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

At the time of LIFE interview on June 24, 2005, the applicant, in a sworn statement, indicated:

In January 1981 I entered the United States with my father. We crossed the Canadian Border by car and we went to Chicago, IL. In 1987 I left the United States and went to Pakistan for my father's funeral. I returned to the U.S. 2 months later at Chicago. I used a photo switched passport to re-enter.

The applicant did not claim this absence on his Form I-687 application; the applicant claimed on his Form I-687 application that he only departed the United States in February 1988 in order to attend his father's funeral.

The applicant's failure to disclose this 1987 absence from the United States is a strong indication that the applicant was not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation. This further undermines the credibility of the applicant's claim to have continuously resided in the United States since before January 1, 1982, through May 4, 1988.

An absence of more than 45 days must be "due to emergent reasons" significant enough that the applicant's return "could not be accomplished." In other words, the reasons must be unexpected at the time of departure from the United States and of sufficient magnitude that they made the applicant's return to the United States more than inconvenient, but virtually impossible. However, in the instant case, that was not the situation. There is no evidence to indicate that an emergent reason delayed the applicant's return to the United States within the 45-day period. The applicant's prolonged absence would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. Accordingly, the applicant's 1987 absence from the United States exceeded the 45-day period allowable for a single absence, and interrupted his "continuous residence" in the United States.

The applicant's two-month stay in Pakistan during the requisite period interrupted his "continuous residence" in the United States. Therefore, the applicant has failed to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. §§ 245a.11(b) and 15(c)(1). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

Finally, it is noted for the record on June 15, 1991, the applicant was arrested by the Chicago Police Department for aggravated assault, a misdemeanor. In response to a request for the final court disposition, the applicant submitted court documentation from Circuit Court of Cook County, which indicated that the following disposition was rendered "06/17/91 bond set by rule of court" and "7/26/91 Stricken Off, Leave Reinstated."

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