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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK Date: **SEP 22 2008**
MSC 01 310 60307

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. 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, reopened, and denied again by the Director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director initially 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 from the initial decision, counsel argued that in reissuing the Notice of Intent to Deny, the director did not provide the applicant an opportunity to respond to the notice and, therefore, the applicant's right to due process was unfairly violated. Counsel also argued that Notice of Decision was based on incorrect information.

In her subsequent decision, the district 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, counsel argues that the issuance of an amended Notice of Intent to Deny was improper as the director did not have jurisdiction once the Form I-290B for the initial decision had been accepted.

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 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:

- A five-year lease agreement purportedly entered into on November 15, 1981 between the applicant and [REDACTED]
- An affidavit notarized November 18, 1991, from [REDACTED] of 1965 [REDACTED] Brooklyn, New York, who indicated that the applicant has resided with him since January 1988. The affiant asserted that all the rent receipts and utility bills are in his name. A letter from [REDACTED] president of Fantastik Construction, Co., in Brooklyn, New York, who indicated that the applicant was employed as a painter from November 1981 to December 1988.
- A notarized affidavit from [REDACTED], who attested to the applicant's residence at 1965 [REDACTED] since January 1988.
- A notarized affidavit from Mohammed Sani of Toronto, Canada, who attested to the applicant's visit from December 1, 1987 through December 15, 1987.
- A bill from Republic Construction, Co. in Brooklyn, New York dated December 28, 1981. An envelope containing United States Post Office postage metered stamp of March 28, 1987, in the amount of "026.7" and addressed to the applicant at [REDACTED] New York.

On March 10, 2006, the director issued a Notice of Intent to Deny, which advised the applicant of inconsistencies between his testimony, application and supporting documents. The applicant was granted 30 days in which to submit additional evidence. The notice, however, was returned by the post office as undeliverable. On September 30, 2006, the director denied the application as the applicant failed to submit any evidence to overcome the director's findings.

In a letter dated December 26, 2006, counsel indicated that the applicant learned of the denial of his LIFE application when his request for advance patrol was denied.¹ Counsel asserted that the applicant had not received the Notice of Decision that denied his LIFE application. Counsel provided documentation dated November 15, 2005, from the National Benefits Center acknowledging the applicant's change of address.

On January 26, 2007, the director withdrew the previous decision, reopened the proceedings, and issued a Notice of Decision dated February 7, 2007. The director included a copy of the Notice of Intent to Deny with the new denial notice. On appeal, counsel argued that the director deprived the applicant of his opportunity to respond to the Notice of Intent to Deny and, therefore, the applicant's right to due process had been violated. Counsel also argued that the Notice of Intent to Deny appeared to be a boilerplate notice as the director repeatedly referred to Bangladesh as the country where the applicant had traveled. Counsel asserted that the

¹ The Form I-131, Application for Travel Document was denied on November 16, 2006.

applicant is a Pakistani national and has never been to Bangladesh. Counsel asserted the director “has predicated her denial decision based on completely wrong information interview Qs and As.”

On February 28, 2007, the director withdrew the previous decision, reopened the proceedings, and issued an amended Notice of Intent to Deny. In the notice, the applicant was advised that the evidence submitted did not establish his continuous unlawful residence in the United States since before January 1, 1982 through May 4, 1988. In addition, the applicant was advised that there were discrepancies between his testimony, application and documentation. Specifically: 1) at the time of his interview, the applicant was asked if he had a lease agreement, rent receipts, or money order receipts. The applicant replied “no;” 2) the 1981 lease agreement from [REDACTED] was fraudulent as the lease agreement indicates it was not published until 1987 and the notation “apartment lease, stabilization clauses 8 ½ pt. type” indicated on the agreement has a December 1987 date; 3) the 1981 receipt from Republic Construction Co., is fraudulent as it listed a telephone and facsimile number with the area code of “718”. The “718” area code did not come into existence until September 1, 1984; and 4) the postage metered stamp envelope was fraudulent because according to the General Post Office, metered stamps were issued at the rate of “0.15” cents from 1986 through March 1988.

The director, in issuing her Notice of Intent to Deny, also drew extensively from the questions and answers provided at the time of the applicant’s LIFE interview. However, neither the interviewing officer’s notes nor a signed statement executed by the applicant corroborating the interviewing officer’s questions, which would further impact adversely on the applicant’s credibility, were incorporated into the record. Accordingly, the AAO finds that there is insufficient evidence in the record to support the director’s findings that the applicant’s oral testimony was inconsistent with other information in the record, and these findings are withdrawn.

Counsel, in response, did not address the adverse evidence or provide any credible evidence to overcome the director’s findings. Counsel submitted copies of previously issued notices along with his brief that was submitted on appeal. Counsel argued, in pertinent part:

In view of the fact that you have not rescinded your denial noticed dated February 7, 2007, and the fact that the Appeal has been accepted by your office on February 26, 2007, we believe it is improper and now moot for your office to issue an amended Notice of Intent to Deny, as the appeal is now considered pending, therefore, your office no longer has the jurisdiction over the I-485 application.

The director, in issuing her Notice of Decision on April 2, 2007, noted that counsel’s response was insufficient to overcome the grounds for denial.

On appeal, counsel does not address the basis for the denial of the application or provide any evidence to overcome the director’s findings. Counsel states, “[t]he applicant maintains the reasons for the appeal that was submitted on February 26, 2007.”

The regulation at 8 C.F.R. § 103.5(b) provides that upon the filing of an appeal, the director may *sua sponte* reopen any proceeding under his or her jurisdiction and may reconsider any decision rendered in such proceeding. Therefore, counsel’s argument has no merit.

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 regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that 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.

Finally, the record contains court documentation from the Queens County Criminal Court in New York, which reflects that on December 21, 1997, the applicant was arrested and subsequently charged with violating Vehicle Traffic Law (VTL) 511.1 and VTL 509.1. On December 22, 1997, the applicant pled guilty to violating VTL 509.1, operating a motor vehicle without a license, and was ordered to pay a fine in Docket no.97Q058202.² While this conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a), the AAO notes that the applicant does have a misdemeanor conviction.

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

² New York VTL 509.11 states that a violation of any provision of this section (this includes VTL 509.1) “shall be punishable by a fine of not less than fifty nor more than two hundred dollars, or by **imprisonment for not more than fifteen days**, or by both such fine and imprisonment...” (Emphasis added.). Consequently, VTL 509.1 is a misdemeanor as defined in 8 C.F.R. §§ 245a.1(o).