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FILE: [REDACTED]
MSC 02 365 60987

Office: GARDEN CITY

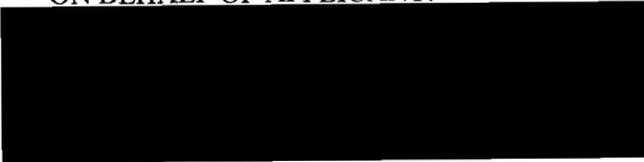
Date: **APR 01 2009**

IN RE: Applicant:



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.

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 in Garden City, New York. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for legalization under the LIFE Act.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. See 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 applicant, a native of the Dominican Republic who claims to have lived in the United States since August 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 30, 2002. It is noted that the applicant was 12 years old in 1981, at the time he claims to have entered the United States.

In a Notice of Intent to Deny (NOID), dated December 31, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish his claim. The director cited inconsistencies between the applicant’s testimony at his LIFE legalization interview on October 11, 2007, and documentation in the record regarding the applicant’s initial entry into the United States and his continuous residence in the country, which undermines the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country throughout the period required for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

The applicant responded and offered some explanations for the evidentiary discrepancies cited in the NOID and submits no additional documentation. The director however, did not acknowledge receipt of the applicant’s response and did not consider the information submitted by the applicant in his decision to deny the application. On February 5, 2008, the director issued a Notice of Decision denying the application for the reasons stated in the NOID. The AAO will

consider the information provided by the applicant in response to the director's NOID in its decision.

On appeal counsel asserts that the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for legalization under the LIFE Act. Counsel submits no additional documentation with the appeal.

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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982, resided continuously in an unlawful status through May 4, 1988, consists of affidavits from five individuals who claim to have known the applicant resided in the United States during the 1980s. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The documentation submitted by the applicant is not probative or credible.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988, such as school or hospital records which is reasonable to expect from a child of 13 in 1981.

The record reflects that the applicant, who was born on May 4, 1969, and who claims that he has been residing in the United States since 1981, would have been only 12 years old when he entered the country. However, the applicant does not submit any school or medical records nor does he provide an explanation as to why he is unable to provide his school or hospital records. In addition, the applicant does not provide any supporting documentation as to how he was able to sustain himself or make contributions towards rent or household expenses at such a young age. In 1981 the applicant was 12 years old, and therefore, would have had to have been provided for and cared for by an adult.

The record reflects that the applicant filed two Forms I-687 (application for status as a temporary resident) in June 1991 and on September 24, 2004. The two forms contain contradictory information regarding the applicant's entry into the United States and his continuous residence in the country during the statutory period. Additionally, the information on the Form I-687 filed in 1991 is contrary to the applicant's testimony at his LIFE legalization interview on October 11, 2007 and inconsistent with affidavits submitted by the applicant in support of his application. For example, on the Form I-687 the applicant filed in 1991, he claims that he last entered the United States on October 16, 1983. He indicated his address in the United States during the 1980s as: '██████████' from July 28, 1981 to the present (1991). On the Form I-687 filed on September 24, 2004, the applicant indicated that he last entered the United States on July 28, 1981. He listed his addresses in the United States during the 1980s as follows:

- ██████████ from August 1981 to May 1984;
- and
- ██████████, from June 1984 to April 1989.

The information stated by the applicant about his residence in the United States on the Form I-687 filed in 1997, is inconsistent with the affidavits in the record submitted by the applicant in support of his application. The inconsistencies in the record and the applicant's failure to submit documentation to rebut or reconcile the inconsistencies cast considerable doubt on the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.* 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 and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status and was continuously physically present in the United States during the requisite periods.

The applicant has provided contradictory testimony and information in support of his application. 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 – consisting of affidavits – from individuals who claim to have rented apartment to or otherwise known the applicant in the United States during the 1980's is suspect and not substantive. Some of the affiants submitted two separate affidavits. The record reflects that the affidavits were internally inconsistent. For example, the affidavit from ██████████ dated March 29, 2006 stated that she had known the applicant since December 1981, that she met the applicant in New York City, where the applicant worked and resided at that time, that she was aware that the applicant later traveled to Florida in 1989 for a short period to work. However, in her affidavit of September 23, 2007, ██████████ stated that she had known the applicant since January 1981. The applicant on the other hand,

stated at his LIFE legalization interview on October 11, 2007, that he first entered the United States in August 1981. It is highly impossible that [REDACTED] could have attested to the applicant's presence and residence in the United States in January 1981 when the applicant himself did not enter the United States until August 1981. As previously stated, doubt cast on any aspect of the applicant's evidence will lead to the reevaluation of other documents submitted in support of his application. *See Matter of Ho, id.* Therefore, it must be concluded that the applicant has failed to submit credible evidence to establish that he entered the United States before January 1, 1982 and continuously resided in the United States in an unlawful status during the statutory period for legalization under the LIFE Act.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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