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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 02 073 62047

Office: GARDEN CITY

Date:

APR 22 2009

IN RE: Applicant: [REDACTED]

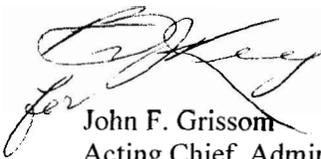
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

IN 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.



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, Garden City, New York, 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 asserts that he has submitted genuine and credible documents that are reliable because they were provided by honest and disinterested people.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 and 8 C.F.R. § 245a.11(b).

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 affidavits from affiants who attested to the applicant's residence in the United States during the requisite period. The applicant also provided affidavits from [REDACTED] and a brother-in-law, [REDACTED], who attested to the applicant's absence from the United States to Mexico from October 1987 to November 1987. [REDACTED] indicated that he is employed by World Environmental Organization in Mexico, and [REDACTED] indicated that he made arrangements for the applicant to travel to and from the United States to Mexico aboard a Mexican boat.

On June 5 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits. The applicant was advised of his contradicting statements regarding his entry into the United States. Specifically, on his questionnaire dated October 21, 1993, the applicant indicated that he first entered the United States on May 10, 1981. In a signed statement dated November 19, 1993, the applicant claimed he illegally entered the United States on May 30, 1981, by truck from Mexico to New Orleans, and at the time of his interview on June 17, 2004, the applicant claimed that he first entered the United States in May 1981 through the Canadian border. The applicant was also advised of his contradicting statements regarding his absence from the United States. Specifically, on his Form I-687 application, the applicant indicated that he departed the United States on October 25, 1987 and returned November 20, 1987. However, at the time of his interview, the applicant indicated he returned to the United States in October 1987.

The applicant, in response, asserted that the affidavits provided were genuine and credible and were simply confirming the facts as they were. The applicant asserted, in pertinent part:

I do know and I am certain that my first entry into the USA was in May 1981 through Mexico. The Service is trying to overstretch that fact because I misspoke. It does happen sometimes and should not in my view have any weights on the issuing of the decision. As far as my trip to Mexico in 1987, I remember to have said during the interview that my recollection was not perfect and my reentry in the USA was in late October or November 1987. The Service seems not to dispute my eligibility but rather is picking on details that have no bearing whatsoever on the merit of my case.

The director, in denying the application, considered the applicant's response, and determined that his response was not sufficient to overcome the grounds for denial.

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 AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as he has presented inconsistent documents, which undermines his credibility.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The affiants failed to provide detailed evidence of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits provided by the affiants do not provide sufficient detail to establish that the witness had an ongoing relationship with the applicant for the duration of the requisite period that would permit the applicant to know of the applicant's whereabouts and activities throughout the requisite period.

The applicant claimed on his Form I-687 application that he was self-employed during the requisite period. However, the applicant provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant indicated on his Form G-325A, Biographic Information, to have been married in Dakar, Senegal in 1986. The applicant did not list an absence during this period on his Form I-687 application. The applicant's failure to disclose this 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.

Although the applicant indicated on the Form G-325A he was married in 1986, the applicant claimed on his Form I-687 application signed October 21, 1993, that he has never been married.

These inconsistencies raise serious questions regarding the authenticity of the supporting documents submitted with the LIFE and Form I-687 applications and tend to establish that the applicant utilized the affidavits in a fraudulent manner in an attempt to support his claim of *continuous* residence in the United States.

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.

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