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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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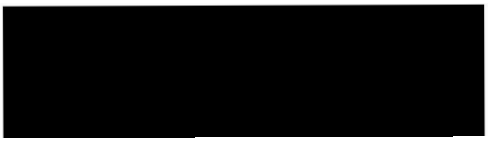
IN RE: Applicant: 

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: SELF-REPRESENTED

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.

for 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, New York, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

On appeal, the applicant asserts that he has submitted sufficient evidence to establish his continuous residence. The applicant submits a previously provided affidavit from , dated January 19, 2008, accompanied by a photo copy of New York Driver License.

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).

"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.

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), dated January 3, 2008, the director notified the applicant that he had failed to establish that he had resided continuously in an unlawful status during the requisite period. The director noted that the applicant submitted affidavits that were neither credible nor amenable to verification. The director also noted that the applicant had submitted an asylum application, Form I-589 which contradicted his Form I-687 application. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated February 4, 2008, the director denied the application for the reasons stated in the NOID. It is noted that although the director stated that the applicant failed to respond to the NOID, the record indicates that the applicant did respond to the NOID. The response to the NOID was comprised of a letter from the applicant's former counsel (who is no longer authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant) and an affidavit from dated January 19, 2008, accompanied by a photo copy of New York Driver License.

On appeal, the applicant's former counsel, asserts that the applicant has submitted sufficient evidence to establish his eligibility. He also states that the applicant never applied for asylum, and contends that the director's reference to a Form I-589 having been filed by the applicant is incorrect. claims that there is a case of mistaken identity of the applicant with the Form I-589

applicant, and states that the applicant has provided his fingerprints for comparison with those the Form I-589 applicant.

The AAO notes, however, that the record of proceedings reveals that the Form I-589 application had been prepared by Sheldon Walker, an attorney who has been convicted for his involvement in preparing numerous fraudulent asylum applications.

At this late stage, the applicant cannot avoid the record he has created. As noted above, the record of proceeding contains a Form I-589 which the director determined had been filed by the applicant and which, as noted above had been prepared by an attorney who is known to have prepared fraudulent documents for immigration applicants. The Form I-589 application together with the documentation submitted by the applicant in support of asylum application, is an indelible part of the record. As such, it cannot be purged from the record. The AAO will make its determination of the applicant's eligibility based on the entire record as constituted.

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 evidence, such as letters, affidavits, and receipts, to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

The record reflects that the applicant has submitted questionable documentation. The applicant has submitted several affidavits and letters attesting to his continuous residence. However, this evidence is unreliable as the record reflects that the applicant has submitted applications that were prepared by attorneys known to have prepared fraudulent immigration documentation for various applicants.

For example, the applicant indicates on his Form I-687 application that he first entered the United States in June 1981, and he provided several letters and affidavits from individuals attesting to his residence in the United States in an attempt to establish his continuous residence throughout the requisite period. It is clear that his Form I-687 and the evidence provided contradict his Form I-589 application wherein he indicated that he first entered the United States on August 7, 1993.

In that the applicant has submitted contradictory applications, there are considerable doubts as to whether the applicant's claim is true, and whether any of the documents, including the affidavits and letters, that the applicant provided in support of his LIFE application are genuine.

The applicant has failed to submit sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. As also noted above, the discrepancies in the record of evidence, cast considerable doubt on the applicant's claim that he resided in the United States since prior to January 1982 in an unlawful status. Accordingly, the evidence submitted by the applicant to establish his continuous residence, is deemed not credible. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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 and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

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.