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FILE: [REDACTED] Office: NEWARK Date: APR 24 2009
MSC 01 304 60277

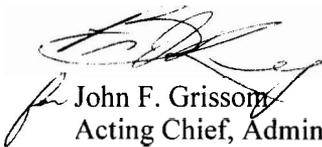
IN RE: Applicant: [REDACTED]

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, Newark, New Jersey, 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 he has presented sufficient documents to establish his continuous residence in the United States during the requisite period. The applicant asserts, "there is no requirement in the statute as to the numbers of proofs required or an absolute as to what proof must be provided" and, therefore, the director's decision is arbitrary and capricious.

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 the following evidence:

- An affidavit from [REDACTED] who indicated that the applicant visited his home on special occasions “like New Year and Christmas from last many years.” In a separate statement, the affiant indicated that the applicant had been doing odd jobs since December 1981 to September 1983. The affiant attested to the applicant’s moral character.
An undated letter from [REDACTED] of Tempo Travel in Jersey City, New Jersey, who indicated that the applicant purchased airline tickers for travel to Pakistan from August 10, 1987 to September 8, 1987. The affiant indicated the applicant was employed by the travel agency during this time.
- An affidavit from [REDACTED] of Rosewell Grocery in Union city, New Jersey, who attested to the applicant’s employment from December 1981 to August 1987.
- An affidavit from [REDACTED], who indicated that the applicant has been his tenant at [REDACTED], Lakewood, New Jersey from December 1981 to August 1987.
- An affidavit from [REDACTED] who indicated that the applicant has been his tenant at [REDACTED] Jersey City, New Jersey since September 1987.
- An undated letter from an individual with an indecipherable name indicating that the applicant has been a patient for dental treatment since 1981 with [REDACTED] [REDACTED] and [REDACTED] in Brooklyn, New York.
- An affidavit from [REDACTED] of Jennifer Travel in Union City, New Jersey, who indicated that the applicant has been employed since September 1987.
- A letter dated September 26, 2002, and an affidavit notarized October 28, 2005, from [REDACTED] who indicated that he met the applicant at Rosewell Grocery store on December 20, 1981. The affiant attested to the applicant’s employment at Rosewell Grocery until 1987 and to his employment at Jennifer Travel. The affiant asserted that he and the applicant became very good friends and has kept in touch since their first meeting. The affiant attested to the applicant’s moral character.
- An affidavit from [REDACTED], who indicated that he has been acquainted with the applicant since December 20, 1987. The affiant asserted that the applicant has been working in the United States for approximately 25 years and attested to the applicant’s moral character.

- An affidavit from [REDACTED], who indicated that he and the applicant were roommates on September 1, 1987, at [REDACTED], Jersey City, New Jersey. The affiant asserted that all utility bills and rent were in his name.
- An affidavit from [REDACTED] a molbi (priest) at Sunni Rizvi Jamia Masjid in Jersey City, New Jersey, who indicated that he has known the applicant since January 5, 1982 and that the applicant attends Friday prayer services.

The applicant also provided an envelope that lacks probative value as the postmarked date is indecipherable.

On October 7, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record.

The applicant, in response, submitted copies of documents that were previously submitted along with affidavits from affiants attesting to the applicant's employment and residence subsequent to the period in question.

The U.S. Citizenship and Immigration Services (USCIS) 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, USCIS 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 should be analyzed to determine 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, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The letter claiming that the applicant has been a dental patient since 1981 gives rise to questions whether the indecipherable signature is that of a person who was authorized and affiliated with the dental office. Furthermore, no dental receipts or appointment notices were provided to corroborate this questionable letter.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests. Further, the applicant did

not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

As [REDACTED] claimed to have known the applicant since December 20, 1987, he cannot attest to the applicant's residence in the United States prior to that date.

[REDACTED] and [REDACTED] claimed to have known the applicant since 1981, but failed to state the applicant's place of residence during the requisite period, and provide 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.

[REDACTED] indicates that the applicant was employed at Tempo Travel during his absence from the United States. The applicant, however, did not claim any employment with this company on his Form I-687 application.

The employment affidavits 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.

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.

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).

On his Form G-325A, Biographic Information, dated July 23, 2001, the applicant indicated that he was married in Pakistan on August 10, 1985. 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 he was married in 1985, the applicant did not claim to have a spouse at the time he filed his Form I-687 application in 1990.

These factors further 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 and letters in a fraudulent manner in an attempt to support his claim of *continuous* residence in the United States. The Form G-325A undermines the credibility of the applicant's claim to have *continuously* resided in the United States during the period in question and, therefore, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982, through May 4, 1988, as required.

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