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U.S. Citizenship
and Immigration
Services

L2

FILE: [REDACTED]
MSC 01 310 60637

Office: NEW YORK

Date: **AUG 06 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).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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.

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application after determining that 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 discusses the evidence submitted in his case and states that he qualifies for the immigration benefit sought.

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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 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 period, 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 states 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 petitioner 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 or petitioner 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 or petition.

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).

Here, the applicant submitted evidence that is not relevant, probative and credible. The applicant submitted the following information, relevant to the requisite period, in support of his claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988:

- The applicant submitted affidavits from [REDACTED] and [REDACTED]. The affidavits are almost identical in form and substance, and state that the affiants have known the applicant since 1981 when the three worked at the same construction company. The affiants state that the applicant accepted different employment in 1983, but that they maintained contact with the applicant thereafter on a social basis. The affiants further state that the applicant left the United States in 1987 for a brief family visit and upon his return he was not permitted to file for legalization because of his travel outside the United States.
- The applicant submitted notarized documents entitled "Residency Certificate" from [REDACTED] and [REDACTED]. The [REDACTED] certificate indicates that the applicant lived with her at [REDACTED] from November of 1981 – February of 1985. The [REDACTED] certificate indicates that the applicant lived with him at [REDACTED] NY from March of 1985 – June of 1989. No other details are provided.

Although the applicant has submitted the above referenced affidavits in support of his application, along with his own statement, he has not established his continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The referenced affidavits state generally how the affiants know the applicant, and that the applicant has resided in the United States for the requisite period, or some portion thereof. The affidavits provide no additional relevant information. The affidavits does not provide concrete information, specific to the applicant and generated by the asserted association with him, that would reflect and corroborate the extent of that association and demonstrate that it is a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that the witness statements/affidavits submitted by the applicant do not indicate that their assertions are probably true. Therefore, the affidavits are of little probative value.

- The applicant submitted two employer affidavits in support of his application. The affidavits are on identical forms and provide the following information:

An affidavit is signed by [REDACTED] and indicates that the applicant was employed by [REDACTED] from December of 1981 until October of 1983 as a

helper earning \$4.00 per hour. [REDACTED] states that the information provided is taken from company records located at company offices, but that the Immigration and Naturalization Service may not have access to the records due to their confidentiality.

An affidavit signed by [REDACTED] indicates that the applicant was employed by Quigg Construction Corp. from November of 1983 until April of 1989 as a general helper earning \$7.00 per hour. [REDACTED] states that the information provided is taken from company records located at company offices, but that the Immigration and Naturalization Service may not have access to the records due to their confidentiality.

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 employment statements submitted by the applicant fail to provide the information required by the above-cited regulation. The statements do not provide: the applicant's address at the time of employment; show periods of layoff (or state that there were none); or state the applicant's duties. As such, the employment statements are not deemed probative and are of little evidentiary value.

Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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