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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services



L2

FILE: [Redacted]
MSC 02 162 66128

Office: NEW YORK

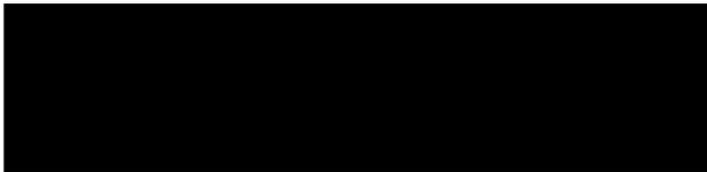
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IN RE: Applicant: [Redacted]

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:



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.

A handwritten signature in black ink, appearing to read "J. Grissom".

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 because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement.

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).

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). 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.

The applicant filed a Form I-485, Application to Register Resident or Adjust Status, under the LIFE Act on March 11, 2002. The director denied the application on September 28, 2007. The applicant, through counsel, filed a timely appeal from the director's decision on October 29, 2007.

The record reflects that the applicant, a native and citizen of Trinidad and Tobago, by his own admission and documentation contained in the record, first entered the United States on as a nonimmigrant visitor for pleasure (B-2) on February 27, 1988. Thus, he is ineligible for adjustment of status under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

On appeal, counsel claims that because an application for temporary resident status filed by the applicant's spouse was approved, and the applicant entered the United States prior to December 1988, he is eligible to adjust his status to permanent residence pursuant to Section 1504 of the LIFE Act.

Counsel's claims are without basis. Section 1504 of the LIFE Act merely provides, in part, that the spouse and unmarried children of a LIFE Act beneficiary shall, with exceptions, not be removed under certain grounds of the Immigration and Nationality Act and shall be authorized to engage in employment.

As previously indicated, Section 1104(c)(2)(B) of the LIFE Act requires that an applicant establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since such date and through May 4, 1988. The provisions under the section do not relax the other requirements for eligibility for adjustment of status under the LIFE Act. The applicant admits that he did not enter the United States until February 1988. Therefore, he cannot satisfy the continuous unlawful residence requirements of the LIFE Act. Consequently, the director's decision to deny the application will be affirmed.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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