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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 213 61122

Office: NEW YORK

Date:

FEB 04 2009

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 office that originally decided your case. If your appeal was sustained, or if your case 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.

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

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On November 29, 2007, the Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant failed to submit sufficient evidence to establish his continuous presence in the United States during the statutory period. The director noted that the retail receipts the applicant submitted appeared to be fraudulent.

On appeal, the applicant asserts that the evidence already in the record is sufficient to meet his burden of proof in this case and that he did not commit fraud.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence 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. See 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 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 or 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. 245a.12(f). Affidavits that indicate specific, personal knowledge of the applicant’s whereabouts during the

relevant time period are given greater weight than fill-in-the-blank affidavits that provide generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in CSS v. Meese [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)" dated September 12, 1990.

On May 1, 2003, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On August 10, 2004, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden and establish by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true.

The documentation that the applicant submits in support of his claim consists of several letters and affidavits and several retail receipts.

The handwritten retail receipts the applicant submitted can be given minimal evidentiary weight. Although the applicant's name is written on the receipts, no address is included and, while receipts for purchases may indicate presence in the United States on the date issued, they have minimal weight as evidence of continuous residence.

The affidavits submitted in response to a September 24, 2007, Notice of Intent to Deny issued by the director and signed by [REDACTED], and [REDACTED] can be given minimal weight as evidence of the applicant's required continuous residence as they contain minimal details regarding any relationship with the applicant during the requisite period. Although the affiants assert that they have known the applicant since 1981 or for the last 20 years, they fail to indicate any personal knowledge of the applicant's claimed entry to the United States during that year. While they assert that they have seen the applicant regularly since 1981, the affiants also fail to provide sufficient relevant details regarding the circumstances of the applicant's residence during the statutory period. Lacking

such relevant detail, the statements can be afforded only minimal weight as evidence of the applicant's continuous residence in the United States for the requisite period.

The applicant submits four fill-in-the-blank "Affidavit of Witness" forms, all notarized on May 5, 1990. The forms signed by [REDACTED] and [REDACTED] state that the affiant has personal knowledge that the applicant has resided in the United States at two different addresses in Flushing, New York. The form language allows the affiant to fill in a statement that he or she "first met the applicant due to the following circumstances: ____." None of the affiants added any information or details in the corresponding blank. Although the dates and addresses provided are generally consistent with the information provided on the applicant's Form I-687, these affidavits, prepared on a fill-in-the-blank form, contain minimal details regarding a relationship with the applicant during the requisite period. The affiants do not provide any details about when, where or under what circumstances they met the applicant. They fail to indicate any personal knowledge of the applicant's claimed initial entry to the United States and provide hardly any details of the circumstances of his residence. Lacking relevant details, these statements can be given minimal weight as evidence of the applicant's continuous residence in the United States during the required period.

The letters from [REDACTED] and [REDACTED], can also be given minimal evidentiary weight. As the applicant's former landlords, [REDACTED] and [REDACTED] fail to submit corroborating evidence of the applicant's residence in the dwelling, such as a lease or rent receipts, or in the alternative, an explanation of the payment arrangements that existed with the applicant. They also fail to submit evidence to corroborate that they themselves were physically present during the statutory period or that they owned the house where they rented a room to the applicant for several years.

The employment verification letter signed by [REDACTED] the president of [REDACTED] Industries can be given little evidentiary weight as it fails to comply with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, [REDACTED] does not provide the applicant's address at the time of employment, any periods of layoff, declare whether the information was taken from company records, or 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 letter signed by [REDACTED] of St. Michael's Church in Flushing, New York, can be given minimal evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. 245a.2(d)(3)(i). Specifically, the letter does not explain the origin of the information given and not does provide the address where the applicant resided during the period of his involvement with the church. Furthermore, the letter does not provide a specific date when the applicant first began attending services at the church, became a registered member of the church, or the frequency with which he attended. Given this

lack of detail, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period;

Although the applicant has submitted several letters and affidavits in support of his application, he has not provided credible, contemporaneous evidence of residence in the United States during 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.

The record of proceedings contains other documents, including several employment verification letters, copies of Internal Revenue Service (IRS) tax returns and attachments, date-stamped envelopes addressed to the applicant, and bills from [REDACTED] and [REDACTED]. This evidence is dated after or refers to events that occurred after May 4, 1988, and does not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection on an unspecified date in 1981, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

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.