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FILE:

MSC 01 285 60117

Office: WEST PALM BEACH

Date: FEB 24 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).

IN BEHALF OF APPLICANT: Self-represented

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 "John F. 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, West Palm Beach, Florida, 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 that he entered the United States before 1981 and states that he has been physically present in the United States since November 6, 1986. The applicant requests that the director's decision be reversed.

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 notarized October 17, 1991, from farm labor contractor [REDACTED] of Belle Glade, Florida, who attested to the applicant's agricultural employment on a seasonal basis from January 20, 1982 through 1986. The affiant asserted that no records were kept as all workers were paid in cash.
- An additional affidavit notarized May 30, 2005, from [REDACTED], who indicated that the applicant was in his employ laboring in fruits from January 1, 1986 to August 25, 1989.
- An affidavit from [REDACTED] of Belle Glade, Florida, who indicated that the applicant resided with him at his home [REDACTED], from January 1981 to 1989.

The applicant also submitted additional documents; however, they have no probative value in this proceeding as they attest to the applicant's residence subsequent to the period in question.

On June 28, 2005, the director issued a notice requesting that the applicant submit evidence to establish his residence and presence during the requisite period and his entry into the United States prior to January 1, 1982. The applicant, in response, submitted wage and tax statements for 1976 and 1977 and receipts from [REDACTED], dated October 12, 1986 and September 15, 1988.

The director, in denying the application, noted 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.

On appeal, the applicant cites the regulation (8 C.F.R. § 245a.16) pertaining to physical presence and asserts, in pertinent part:

Evidences that I submitted on my behalf on my continuously physically in the United States are very clear and adequate to grant me Permanent status residence. I believe one of things which confused in my interview was continuously in the United States from November 6, 1986 to May 4, 1988. In my interview, I proved and explained my continuously physically in the United States. For example, I explained and proved to the office the proof of my employment from 1986 to 1988. I also explained that in 1986 I left the United States in August and returned to the United States and returned in September the same year.

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 would not necessarily be fatal to the applicant's claim, 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 receipts from [REDACTED] raise questions to their authenticity as the address for the applicant listed on the receipts during the requisite period was not claimed by the applicant on his Form I-687 application.

[REDACTED] in his initial affidavit, attested to the applicant's employment from January 20, 1982 through 1986. However, in his subsequent affidavit, [REDACTED] attested to the applicant's employment from January 1, 1986 to August 25, 1989. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from the affiant has been submitted to resolve his contradicting affidavits. As such, [REDACTED] affidavits have little probative value or evidentiary weight. In addition, 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).

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).

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).

The record reflects that a Form I-360, Petition for Amerasian, Widow or Special Immigrant, and a Form G-325A, Biographic Information, were filed by the applicant on September 24, 1994. On the Form I-360, the applicant indicated that he resided in his native country, Haiti, from May 1971 to November 1989.

This factor further raises serious questions regarding the authenticity of the supporting affidavits submitted with the LIFE application and tend to establish that the applicant utilized the affidavits 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.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

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