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[REDACTED]

FILE:

MSC 01 345 62249

Office: NEW YORK

Date: FEB 24 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. The file has been returned to the National Benefits Center. 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, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant states that the applicant has submitted evidence that demonstrates his residence in the United States since 1981. The applicant submits additional evidence on appeal.

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).

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 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.

In the Notice of Intent to Deny (NOID), dated December 3, 2007, the director stated that the applicant had failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant indicated on his Form I-687 that since his entry in December 1981, he had once departed the United States for Gambia on April 2, 1988, and returned to the United States on April 29, 1988. However, the applicant has three children who were born, in Gambia, on August 29, 1982, on April 9, 1984, and on September 10, 1986, respectively. The director also noted that Service records do not show that the applicant's wife, [REDACTED], the mother of the children, was ever in the United States. The director determined that the applicant must have been in Gambia in late 1983, and, in December 1985 or in January 1986, respectively, in order to father the children, and therefore, he could not establish his continuous residence throughout the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In his denial notice, dated January 3, 2008, the director denied the application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but failed to overcome the reasons for denial stated in the NOID. The director noted that the applicant's wife could have conceived the child born on August 1982 before the applicant's departure in December 1981. It is noted that in his response to the NOID, the applicant stated that his wife came to the United States "through special arrangements," first in summer of 1983 and departed for Gambia later in October 1983, and again in December 1985 and departed for Gambia in March 1986; and, it was during these trips to the United States that his wife became pregnant.

On appeal counsel for the applicant asserts that the applicant has submitted sufficient evidence to establish the requisite continuous residence. Counsel also states that the applicant stated in his response to the NOID that his wife visited the United States in the summer of 1983, and in December 1985, through "special arrangements." Counsel also states that the applicant's evidence, such as letters from [REDACTED] and from [REDACTED], attests to the applicant's continuous residence in the United States since December 1981

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 from prior to January 1, 1982, through May 4, 1988. The record reflects that the applicant submitted numerous affidavits, letters, and other evidence, as evidence to support his Form I-485 application. The AAO

has reviewed the entire record as it pertains to the requisite period. Here, the submitted evidence is neither probative, nor credible.

Contrary to counsel's assertion, the applicant has submitted questionable documentation. For example, the applicant submitted letters from [REDACTED] and from [REDACTED] in support of his application. However, it is noted that previous applicants have presented letters of the same type from the establishments, and these letters are deemed fraudulent because of similar letters received from these businesses. Therefore, the letters are not credible and are not probative.

In addition, counsel's assertion that the applicant has overcome the issue raised by the director pertaining to his children born in April 1984, and in September 1986, in the Gambia, is not persuasive. The applicant's claim that his wife came to the United States on two occasions, in the Summer 1983 and in December 1985, respectively, is not credible. The applicant does not provide any evidence whatsoever of his wife's travel to or from the United States; instead, he states that his wife came to the United States through "special arrangement(s)." No supporting documentation is provided. It is reasonable to expect that the applicant would be able to provide documentation of his wife's travel, such as her departures and entries from Gambia into the United States and her return trips. Without documentary evidence to support the claim, counsel's assertions will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

These discrepancies cast considerable doubt on whether the applicant's claim that he has been in the United States since December 1981 is true, and whether the affidavits and letters that the applicant submitted in support of his claimed residence are genuine. The applicant has failed to submit any reliable independent, corroborative, contemporaneous evidence to rebut the contradicting evidence in the record. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.