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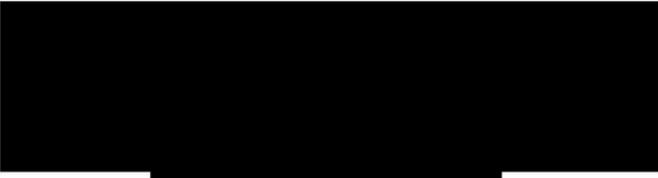
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U.S. Citizenship
and Immigration
Services

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FILE: MSC 02 183 62850 Office: NEW YORK Date:

IN RE: Applicant: [Redacted]

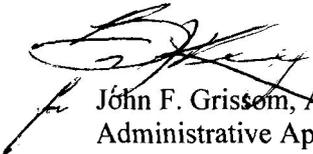
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

IN 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.


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 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, counsel asserts that evidence documenting the applicant's residence in the United States from January 1, 1982, is scarce as over 26 years have passed. Counsel asserts that given the passage of time, the evidence previously submitted meets the applicant's burden.

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).

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. 8 C.F.R. § 245a.11(c).

The regulation at 8 C.F.R. § 245a.16(b) reads as follows:

For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

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 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 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:

- Copies of non-immigrant visitor visas issued to the applicant on March 9, 1981 and June 2, 1987 in Krakow and Poznan, Poland.
- A Form I-94, Departure Record, indicating that the applicant lawfully entered the United States on June 21, 1987.

- A letter dated January 21, 1991, from [REDACTED] president of [REDACTED] and [REDACTED] who attested to the applicant's employment as a carpenter from April 1981 to September 1984.
- A letter dated May 8, 1991, from [REDACTED] manager of [REDACTED] in Bronx, New York, who attested to the applicant's employment as a carpenter from October 1984 to March 1987.
- A letter dated December 21, 1990, from [REDACTED] of [REDACTED] Inc, in Brooklyn, New York, who attested to the applicant's employment as a carpenter from April 1981 to September 1984.
- A letter dated May 8, 1991, from [REDACTED] manager of [REDACTED] in New York, who attested to the applicant's employment as a carpenter from October 1984 to March 1987.
- Several receipts dated during the requisite period.
- A bill from Cornell Medical Center regarding a visit on January 9, 1985.
- Wage and tax statements for 1988 from Phoenix Abatement and A-1 Environmental Service Inc.
- A Form 1099, Miscellaneous Income, and Form 1099-INT, Income Interest, for 1988.
- An affidavit from [REDACTED] who attested to the applicant's residence in Woodhaven, New York from May 1981 to December 1986. The affiant asserted that he has known the applicant on a personal basis.
- An affidavit from [REDACTED], who attested to the applicant's residence in Brooklyn, New York from January 1987 to December 1990. The affiant asserted that she has known the applicant on a personal basis.
- A Lot-Polish Airlines roundtrip ticket issued on March 1, 1981 for travel from Warsaw, Poland to New York from March 17, 1981 to June 10, 1981.
- An American Airlines roundtrip ticket issued on February 1, 1983, for travel from New York to Los Angeles, California from February 20, 1983 to March 4, 1983.
- A Pan American passenger ticket issued on April 23, 1987, for travel from New York to Warsaw Poland on April 24, 1987.
- Photocopies of envelopes postmarked in 1987 and 1988 and addressed to the applicant at [REDACTED] Manville, New Jersey and [REDACTED], Trenton, New Jersey.
- A letter dated May 3, 1988, from City of New York, Department of Environmental Protection.
- Copies of the applicant's Polish passport reflecting that the validity of the passport was renewed by the Polish Consulate General in New York for a year on November 27, 1984, November 13, 1985 and November 5, 1986.

The applicant also submitted utility bills from Brooklyn Union Gas and Con Edison from 1987 and January 1988 to April 1988, respectively. However, as the utility bills were not in the applicant's name they have no evidentiary weight or probative value.

At the time of his LIFE interview, the applicant indicated that he entered the United States without inspection through the Canadian border on March 17, 1981. The applicant indicated he departed the United States on April 24, 1987 due to his sister's illness and returned on June 21, 1987.

On July 18 2007, the director issued a Notice of Intent to Deny, which advised the applicant that there were inconsistencies between his testimony, application and documentation. Specifically, the applicant's claim to have entered without inspection through the Canadian border on March 17, 1981 was highly improbable as the airline ticket from Lot-Polish Airlines indicated that the applicant flew on flight [REDACTED] from Warsaw, Poland to New York on the same day. The applicant was advised that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was advised that the employment letter from [REDACTED] p.¹ was unverifiable and unsubstantiated by independent evidence. The director advised the applicant that his 59-day absence from April 24, 1987 to June 21, 1987 was not considered to be brief, casual, and innocent.

The director, in issuing her Notice of Intent to Deny, also indicated that "there are income taxes filed for the years 1984 and 1985." However, a review of the Form 1040, Individual Income Tax Return, submitted does not support this finding. As the forms were not signed and were not certified as being filed, they have no probative value or evidentiary weight.

In response, counsel asserted that in the absence of any negative documentation that would tend to refute the applicant's residence in the United States during the requisite period, the documents previously submitted were deemed sufficient to establish his residence. Regarding the applicant's 59-day absence from the United States, counsel asserted, in pertinent part:

There is an exception to this rule, when the return could not be accomplished "for emergent reasons". The applicant states that his visit to Poland during the absence of 59 days was to be with his gravely ill sister, who subsequently passed away. While the initial visit was supposed to be brief and innocent, once the applicant had realized that his sister was, in fact, dying of cancer, he had to remain by her bedside for a longer period, forced to make arrangements for the remainder of her life, to make arrangements for their parents, and generally take care of daily matter for the terminally ill sister who needed his help.

The director, in denying the application, determined that counsel's statement was not evidence and, therefore, was not entitled to any evidentiary weight.

On appeal, counsel provides a brief that reiterates his statements made in response to the Notice of Intent to Deny. Counsel provides an affidavit from [REDACTED] of New York, who indicated that she met the applicant in 1986 at a travel agency/store owned by [REDACTED] and has remained friends with the applicant since that time.

¹ The director inadvertently indicated the entity's name as [REDACTED]

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 inconsistent documents, which undermines his credibility. Specifically:

Counsel has not addressed the director's finding regarding the applicant's contradicting claim to have entered the United States without inspection through the Canadian border on March 17, 1981.

The employment letters from [REDACTED] and [REDACTED] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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. Furthermore, the letters from [REDACTED] and [REDACTED] raise questions to their authenticity as the applicant did not claim to have been employed by these entities on his Form I-687 application.

The postmarked envelopes also raises questions to their authenticity as the applicant did not claim residence at either address during the requisite period on his Form I-687 application.

[REDACTED] and [REDACTED] indicated they have known the applicant on a personal basis, but failed to provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.

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).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” 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). 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.

Although emergent reason is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.” In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant’s return to the United States more than inconvenient, but virtually impossible. However, in the instant case, that was not the situation. There is no evidence to indicate that an emergent reason delayed the applicant’s return to the United States on or before June 7, 1987. Except for his statement, counsel does not provide any independent, corroborative, contemporaneous evidence to support the events that occurred while the applicant was in Poland. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant’s continued stay in Poland would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. However commendable the applicant’s decision may have been to stay with his sister, the applicant’s extended absence from the United States – far beyond the 45 days allowed by 8 C.F.R. § 245a.15(c)(1) – was not “due to emergent reasons” outside of his control that prevented him from returning far sooner.

The applicant’s 59-day stay in Poland during the requisite period interrupted his “continuous residence” in the United States. Therefore, the applicant has failed to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. §§ 245a.11(b) and 15(c)(1). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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.