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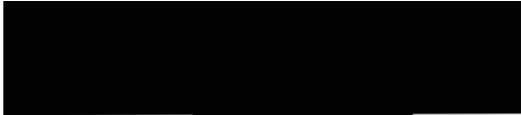
U.S. Department of Homeland Security
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U.S. Citizenship
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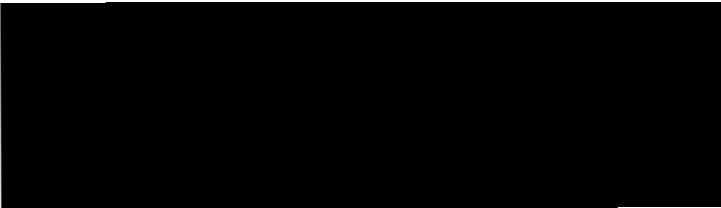
Office: NEW YORK

Date: JAN 02 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:



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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On August 5, 2005, 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 because the applicant failed to establish that he resided continuously in the United States in an unlawful status since before January 1, 1982, through May 4, 1988. The director found that the applicant traveled to Ecuador three times to visit his family but did not establish that his return to the United States could not be accomplished within the time period allowed.

Counsel for the applicant asserts that the applicant first entered the United States in or about October 1981. Counsel refers to a written statement by the applicant in which he states that he traveled to Ecuador three times and that on two of those trips, he was outside the United States for less than 45 days. The applicant states that he traveled to Ecuador on November 4, 1984 and returned on January 10, 1985, for a total of 67 days. He asserts that he was not able to return to the United States within 45 days because his mother was very ill and he wanted to make sure she was well before he left. Counsel asserts that the heart attack the applicant's mother suffered was an emergent reason that justified the fact that he remained outside of the United States for longer than 45 days. Counsel submits letters from the doctor and nurse who treated the applicant's mother for her heart attack and a letter from the applicant's aunt.

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.

According to 8 C.F.R. § 245a.15(c)(1), an applicant for adjustment of status under the LIFE Act shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

The regulation at 8 C.F.R. § 245a.15(c)(1) provides an exception to the continuous residence requirement, if a single absence exceeded 45 days, and the aggregate of all absences did not exceed 180 days between January 1, 1982, through the date the application is filed, if the applicant can establish that due to emergent reasons, his return to the United States could not be accomplished within the time period allowed.

The relevant issue under the regulation is not the fact that the applicant's stay was lengthened by complications, but rather whether the applicant, when leaving the United States, reasonably expected to return within the 45 day time limit, *Ruginsky v. INS*, 942 F.2d 13 (1st Cir. 1991).

The applicant has admitted that he was outside the country for more than 45 days when he traveled to Ecuador from November 3, 1984, to January 10, 1985. Therefore, according to 8 C.F.R. § 245a.15(c)(1), he broke his continuous residence. The applicant has not established, by a preponderance of the evidence, that when he left the United States on November 3, 1984, that he reasonably expected to return within the 45 day time limit. In other words, the applicant has not established, as counsel implies, that the applicant's original intention was simply to visit family in Ecuador, but that his trip had to be prolonged because his mother unexpectedly had a heart attack after his arrival in Ecuador.

Counsel asserts that the basis for the applicant's prolonged absence was that his mother suffered a heart attack while he was in Ecuador visiting family. Counsel asserts that the issue to be determined in this case is whether the applicant exceeded the allowable time outside the United States because of an unforeseen circumstance and that there is "nothing more sudden or unexpected than a heart attack." The documentation the applicant submits includes a letter from the nurse who helped care for his mother during and after her stay in the hospital, the cardiologist who treated her for her heart attack, and her sister.

First, there is no statement in the record from the applicant where he explicitly indicates that his mother suffered a heart attack after his arrival in Ecuador on November 4, 1984, and that his original intent for the trip was for a routine visit and that the trip was not, in fact, prompted by her heart attack. Therefore counsel's assertion that the applicant's mother had a heart attack after the applicant arrived in Ecuador can be given no weight. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant'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). The record of proceeding contains a single statement from the applicant himself. This statement is vague as to the order of events and the applicant's original intention when he traveled. In it, he simply indicates that his second trip to Ecuador lasted 67 days because his mother became ill and he wanted to make sure she was okay before he left. He does not indicate whether he originally traveled to Ecuador on that trip just to visit family and had to change his plans because his mother had an unforeseen heart attack while he was there or whether he traveled to Ecuador knowing that she had suffered a heart attack and simply stayed beyond the allowable time to be with her.

Second, the letters from [REDACTED], who treated the applicant's mother for her heart attack and the nurse who took care of her contradict counsel's assertion that the heart attack occurred after the applicant's arrival in Ecuador, not before. The doctor's letter states that he treated the applicant's mother for a heart attack from November 1, 1984, to January 10, 1985. This indicates that the applicant traveled to Ecuador 2 or 3 days after his mother suffered the heart attack, not that he first traveled to Ecuador and then his mother had a heart attack while he was there. According to the doctor's letter, the applicant's mother was already undergoing treatment for a heart attack when he arrived in Ecuador on November 4, 1984.

Third, the documents submitted by the applicant contradict each other. [REDACTED] letter says the applicant's mother underwent treatment for a heart attack beginning on November 1, 1984. The letter from the nurse who took care of the applicant's mother while she was in the hospital and after she was discharged says that the applicant was in Ecuador from November 1, 1984, to January 10, 1985. The letter from the applicant's aunt submitted on appeal states that the applicant was in Ecuador from November 4, 1984, to January 10, 1985. The applicant's passport indicates that he arrived in Ecuador on November 4, 1985. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not attempted to explain or reconcile these inconsistencies nor has he submitted competent objective evidence pointing to where the truth lies about whether he traveled to Ecuador because his mother had a heart attack or whether she suffered an unforeseen heart attack after he arrived in Ecuador.

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 that when he traveled to Ecuador on November 3, 1984, he reasonably expected to return within the 45 day time limit and has not established 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.