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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: DALLAS

Date:

JAN 06 2009

MSC 02 241 62403
[REDACTED]

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.

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, Dallas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The director noted an inconsistency in the applicant's testimony and application.

On appeal the applicant asks that USCIS reconsider his application.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(b).

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).

An applicant must establish eligibility by a preponderance of the evidence. 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 petitioner 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 petitioner 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 or petition.

United States Citizenship and Immigration Services (USCIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit to establish presence during the required period. 8 C.F.R. § 245a.15(b)(1); *see also* 8 C.F.R. § 245a.2(d)(3)(vi)(L). Such evidence may include employment records, tax records, utility bills, school records, hospital or medical records, or attestations by churches, unions, or other organizations so long as certain information

is included. The regulations also permit the submission of affidavits and any other relevant document, but applications submitted with unverifiable documentation may be denied. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

On August 16, 2006, the director sent the applicant a Notice of Intent to Deny (NOID), which stated that the evidence submitted by the applicant was insufficiently probative of continuous unlawful residence in the U.S. from prior to January 1, 1982 through May 4, 1988, and continuous physical presence in the U.S. from November 6, 1986 through May 4, 1988.

The applicant submitted a written response and some additional evidence.

On August 20, 2007, the director denied the application because the applicant had failed to establish his continuous unlawful presence during the required period.

On appeal the applicant asks that USCIS reconsider his application.

The applicant has submitted sufficient evidence to establish that he has probably been living in the United States since August 1984. The evidence submitted for that period includes utility bills, leases, and other evidence which corroborates the applicant's assertions. At issue is whether the applicant was present and in an unlawful status prior to August of 1984.

Relevant to the period January 1, 1982 through August 1984, the record contains the following evidence:

- (1) Statement from [REDACTED] living at [REDACTED], Chicago, Illinois, dated November 24, 1990, asserting he has known the applicant for the last nine years from the community center where they were both members.
- (2) Statement from [REDACTED] asserting the applicant lived with him in Houston Texas from April 1982 to March 1984.

As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

The documents submitted by the applicant contradict each other, and lack sufficient credibility to lend any weight to the applicant's assertions. The letter at No. 1 above asserts he has known the applicant for nine years from the community center, but he lives in Chicago. The second affidavit asserts the applicant lived in Houston Texas until March 1984, and thus, would not have been attending the community center in Chicago until several years after the first affiant claims to have known him. The statement from [REDACTED] is not corroborated by any other evidence in the record, and in light of the inconsistencies noted in the record, fails to lend any significant weight to the applicant's assertions.

In this case the director failed to note that the applicant's claim relies on his assertion that he entered the United States on December 28, 1981 in a non-immigrant status and somehow violated that status prior to January 1, 1981, in a manner known to the government. At the outset the applicant's assertions are implausible, as he asserted that he entered the United States on December 28, 1981, during a legalization questionnaire interview, as well as his Form I-687s, and refers to a Social Security Number report showing an income for 1981 as evidence that he violated his status. The applicant has not submitted any evidence to establish that he actually entered the United States on that date. The record only establishes that he received his visa on December 14, 1981, in Bombay, India. In addition, the applicant has not explained how he could have arrived in the United States on December 28, 1981, and reported earnings of \$1,600 in the remaining 2 days of 1981. On his Form I-687 he claims he was "supported by his brother," and yet during an interview with USCIS asserts that he lived on money he brought with him from India. The SSN report furnished by the applicant also fails to make clear that such income listed for 1981 was contemporaneously filed or late filed. The report does not show any income for 1982, 1983, or 1984. In light of these inconsistencies the applicant has failed to establish that he entered the United States prior to January 1, 1982, or that he was present in the United States in an unlawful status on January 1, 1982.

In addition, the director failed to note that aliens entering the United States on a B-1 or B-2 visa are not completely precluded from earning revenue. Thus, counsel's assertion that "the applicant entered the United States in 1981, and worked, violating his status" is not sufficient supported to demonstrate that the applicant actually was in an unlawful status on January 1, 1982. When the evidence of record is viewed in its totality it appears that more likely than not the applicant was not in an unlawful status until his B-1 status issued in April 1984 expired, which would have been February 1985.

It is noted for the record that there are other inconsistencies in the applicant's assertions, such as the actual birth date of his daughter, which he listed as 1984 on his Form I-485 and Form I-687, but which was listed as 1987 on an Form I-485 submitted in 2007 for an immediate relative petition. In addition, the applicant asserts different reasons for his alleged travel in 1984 on his Form I-687s, raising further questions about the accuracy of his recollections.

In light of the inconsistencies noted above and the lack of probative, credible evidence in the record which corroborates his assertions or explains the inconsistencies, the applicant has not established eligibility.

Finally, although not discussed by the director, the applicant asserts on his Form I-687s that he was absent for a three month period (March to June 1984), which is greater than the 45 day allowed absence under the LIFE Act legalization program. Further, confusion about when the applicant actually may have actually departed the United States if he was present could indicate that the applicant may have been cumulatively absent for a period greater than 180 days. In any event, by the applicant's own admission he was absent from the United States for a period of greater than 45 days and is statutorily ineligible for LIFE Act legalization. The appeal will be denied for this additional reason.

Pursuant to 8 C.F.R. § 245a.12(e), 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 lack of credible supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.