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FILE: [REDACTED]
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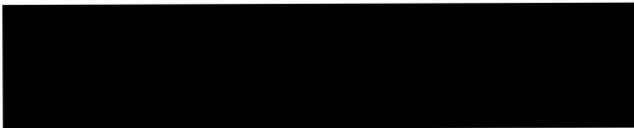
Office: NEW YORK

Date: JAN 06 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. 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, 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 resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserts that the director failed to give sufficient weight to the evidence submitted in support of his application. The applicant contends that he submitted a plethora of evidence to demonstrate his eligibility. No additional evidence was submitted 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 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 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 section 1104 of the LIFE Act. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

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.* at 80. 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 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.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of attestations from individuals claiming to know the applicant. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The affidavits from [REDACTED] and [REDACTED] both contain statements that they have known the applicant since 1981 in Brooklyn. These affidavits fail, however, to establish the applicant’s continuous unlawful residence in the United States for the duration of the requisite period. Neither affiant stated that the applicant has continuously resided in the United States during the required period or his places of residence during the requisite period. Neither affidavit provides concrete information beyond how the affiants first met the applicant, which would indicate a sufficient basis for reliable knowledge about the applicant’s residence during requisite period.

The affidavits from [REDACTED] and [REDACTED] fail to provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that there was a sufficient basis for reliable knowledge about the applicant’s residence during the time addressed in the affidavits. It is also noted that while [REDACTED] attests that she has personal knowledge the applicant resided in the United States since November 1981, she also stated that she has only known the applicant since 1984. This discrepancy detracts from the credibility of her affidavit.

To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record contains declarations from the managers at [REDACTED] and [REDACTED]. The declarations indicate that the applicant resided at [REDACTED] from November 1981 until October 1985 and at [REDACTED] from October 1985 to February 1989. Neither declaration provides sufficient information to indicate that the declarants had direct personal knowledge of the events or circumstances of the applicant's residency. The declarations provide minimal probative value as evidence of the applicant's residence during the requisite period.

The record also includes a declaration from [REDACTED] at Masjid Malcolm Shabazz and a declaration from the Permanent Secretary (name illegible) of Murid Islamic Community in America. Both declarations do not meet the requirements under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). Neither declarant stated where the applicant resided during membership period, established how the author knows the applicant, or established the origin of the information being attested to. Given the lack of relevant details, these declarations provide minimal probative value as evidence of the applicant's residency during the requisite period.

In addition, it is noted that the record contains a Form for Determination of Class Membership signed by the applicant. The applicant stated that he first entered the United States in December 1981. The applicant's own testimony contradicts the testimony from [REDACTED], [REDACTED], and [REDACTED], all of whom stated that the applicant was present in the United States in November 1981. These discrepancies cast further doubt on the credibility of the applicant's claim.

Finally, the record contains attestations from [REDACTED] and [REDACTED], both of whom verify that the applicant visited Canada on February 10, 1988, and returned to New York on March 13, 1988. Neither affiant provided sufficient information regarding the circumstances applicant's residency prior to his trip to Canada. These declarations will only be given weight as evidence of the applicant's absence from the United States in 1988.

Based upon the foregoing, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. 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.

Beyond the decision of the director, the record reflects that on February 22, 1997, the applicant was arrested and charged with a violation under the New York Vehicle and Traffic Law, Title 5, Article 19, Section 509.1 (Docket Number [REDACTED]). On March 25, 1997, the applicant pled guilty in the Criminal Court of the City of New York County of New York. The applicant was sentenced to a fine of \$100.00. This single violation conviction does not render the applicant ineligible pursuant to 8 C.F.R. §245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

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