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FILE:

MSC 02 207 62542

Office: GARDEN CITY

Date:

**JAN 12 2009**

IN RE: Applicant:

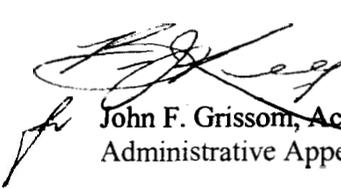
APPLICATION:

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 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, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established 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, counsel asserts that the director erred in denying the LIFE application. Counsel states that the applicant has submitted sufficient evidence to establish his continuous residence. Counsel 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 June 25, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted questionable affidavits attesting to his residence in the United States since 1981. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated October 22, 2007, the director denied the instant 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 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. The applicant submitted affidavits and letters as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

The applicant submitted the following:

Affidavits and letters

- 1) An affidavit from [REDACTED] stating that he met the applicant in Flushing Park, Queens, New York in 1981. [REDACTED] also states that he and the applicant became friends and later he started dating the applicant's sister, to whom he is now married.
- 2) An affidavit from [REDACTED] stating that she has known the applicant since 1984. Mrs. Panama states that she met the applicant when he was a child through her husband, but does not specify when in 1984 she became acquainted with the applicant, nor does she indicate how she dates her acquaintance with the applicant.
- 3) Affidavits from [REDACTED] stating that he has known the applicant since June 1985, and from [REDACTED] stating that she has known the applicant to have resided in the United States since 1981. The affiants, however, do not indicate where and under what circumstances they first became acquainted with the applicant, and whether or how they maintained contact with the applicant throughout these years.

- 4) An affidavit from [REDACTED] stating that the applicant resided at [REDACTED], Brooklyn, NY, from September 1981 to July 1992. [REDACTED] also attests that during that time the applicant paid \$95 rent including household expenses.

The record of proceedings also contains a letter from [REDACTED], of the Basilica of Our Lady of Perpetual Help, located at [REDACTED], Brooklyn, NY, dated June 4, 1993, stating that the applicant came to the United States in 1982, and that the applicant has been a member of the Spanish Speaking Community, and that he attends church on Sundays. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letter from the [REDACTED] does not comply with the above cited regulations because it does not: state the address where the applicant resided during the attendance or membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance (membership) records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letter is not deemed probative and is of little evidentiary value.

It is also noted that the record reflects that the applicant, who was born on April 17, 1970, and who claims that he has been residing in the United States since 1981, would only have been 11 years old at that time. However, the applicant does not submit any school or medical records to substantiate his claim, nor does he provide an explanation as to why he is unable to provide his school records. In addition, the applicant does not provide any supporting documentation as to how he was able to sustain himself or make contributions towards rent or household expenses at such a young age. As the applicant was only 11 years old in 1981, he would have had to have been provided for and cared for by an adult. Yet, no such documentation was provided.

Contrary to counsel's assertion, the applicant has submitted questionable documentation. For example, the applicant submitted an affidavit from [REDACTED] stating that the applicant resided at 19-[REDACTED], Brooklyn, NY, from September 1981 to July 1992, and that during that time the applicant paid \$95 rent including household expenses. [REDACTED] affidavit does not indicate whether the applicant was under the care of an adult, and as noted above, the applicant was 11 years old, and it is unlikely that the applicant would have been able to contribute to rent and living expenses since 1982 as [REDACTED] attests.

These discrepancies cast considerable doubt on whether the applicant resided in the United States since 1981 as he claims. 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 not provided any reliable evidence of residence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. 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. 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, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

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.