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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 034 60149

Office: NEW YORK Date:

JAN 23 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).

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 puts forth a brief disputing the director's findings.

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).

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 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:

- An affidavit from [REDACTED] of Oakford, Pennsylvania, who indicated that she has known the applicant since September 1981. The affiant asserted that she was residing in Queens, New York in September 1981 and the applicant came to her house for a painting job. The affiant attested to the applicant's departure to Pakistan in May 1987 and to his return to the United States in June 1987. The affiant asserted that she visited the applicant at his residence, [REDACTED] Bronx, New York, and has remained in contact with the applicant since that time as she and the applicant regularly met or talked to each other on the phone.
- An affidavit from [REDACTED] of Philadelphia, Pennsylvania, who indicated that she first met the applicant in New York City in October 1981 when the applicant helped her carry her shopping bags to a cab. The affiant asserted that she has remained in contact with the applicant since that time.

On August 17, 2007, the director issued a Notice of Intent to Deny, which advised the applicant 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 director also advised the applicant that he had failed to submit any evidence of his June 1981 entry into the United States.

Counsel, in response, asserted that the director erred in finding that the applicant had failed to establish his entry prior to January 1, 1982, as it is not possible to substantiate an entry which was without inspection. Counsel asserted that the applicant had submitted affidavits from [REDACTED] and [REDACTED] to support his claimed residence during the requisite period. A review of the record, however, does not support counsel's assertion as at the time the LIFE application was filed, the applicant only presented affidavits from [REDACTED] and [REDACTED]. Counsel submitted:

- An affidavit from [REDACTED] of Poughkeepsie, New York, who indicated that in November 1981 she was looking for an address in Bronx, New York and the applicant tried his best to assist her. The affiant affirmed to have known the applicant since November 1981 and asserted that she has remained in contact with the applicant since that time.  
An affidavit from [REDACTED] of Liberty, New York, who indicated that she first met the applicant in 1981 in Bronx, New York. The affiant asserted that she dated the applicant a few times over that summer (1981) and has remained friends with him since that time. The affiant attested to the applicant's moral character.

- A birth certificate for [REDACTED]. However, no affidavit from this individual was submitted.

The director, in denying the application, determined that the affidavits submitted were insufficient to overcome the grounds for denial.

On appeal, counsel asserts there is no record of the director attempting to contact the affiants to verify their respective affidavits. Counsel asserts that the affidavits provided by the applicant are credible and verifiable. Counsel argues that contrary to the memorandum issued by [REDACTED], the director arbitrarily treated the applicant's evidence differently than other applicants who were in the same situation and submitted similar evidence.

Counsel cites the aforementioned legacy Immigration and Naturalization Service (INS) memorandum issued on February 13, 1989, which provided the following guidance on the evidentiary weight of affidavits in legalization applications under section 245A of the Immigration and Nationality Act (enacted as part of the Immigration Reform and Control Act of 1986, or "IRCA"):

In those applications where the only documentation submitted is affidavits, if the affidavits are credible and verifiable, are sufficient to establish the facts at issue and there is no adverse information, the application shall be approved. If found insufficient or not credible, attempts to verify the authenticity of the information should be made ...

The AAO agrees that the 1989 INS memorandum provides valid guidance for adjudicating legalization applications under section 1104 of the LIFE Act. Although the director did not verify the authenticity of the documentation submitted by the affiants, the AAO does not view the affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982.

[REDACTED] and [REDACTED] simply state that they have known the applicant since 1981, but failed to state the applicant's place of residence during the requisite period and provide any details regarding 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. The AAO does not regard the three affidavits as "sufficient to establish the facts at issue," as the 1989 memorandum directs.

Although item 36 of the Form I-687 application requests the applicant to list the full name and address of each employer during the requisite period, the applicant failed to provide complete information. As such, the applicant's alleged employment is not amenable to verification by U.S. Citizenship and Immigration Services.

These factors raise significant issue to the legitimacy of the applicant's residence during the period in question.

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 evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, 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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record contains a Form IAP-66, Certificate of Eligibility for Exchange Visitor, which was signed by the applicant on August 8, 1988. At Part 1, the applicant indicated that the purpose of the form was to *extend* an on going program at Montana State University in Bozeman, Montana. The form was approved on August 18, 1988. At item 5, the applicant indicated that he first entered the United States as an exchange visitor, or acquired exchange visitor status on September 15, 1987. At item four, the applicant indicated that he "went home for one qtr. (Jan-Mar 1988.)."

On his Form I-687 application, the applicant failed to disclose that he had entered the United States with a J-1 visa during the requisite period, and he only claimed one absence from the United States; May 1987 to June 1987. The applicant's failure to disclose these other absences from the United States on his Form I-687 application is a strong indication that the applicant was either outside the United States beyond the period of time allowed by regulation or was not in the United States prior to September 15, 1987.

These factors further raises serious questions regarding the authenticity of the supporting documents submitted with the LIFE application and tend to establish that the applicant utilized the affidavits in a fraudulent manner in an attempt to support his claim of *continuous* residence in the United States. The Form IAP-66 undermines the credibility of the applicant's claim to have *continuously* resided in the United States during the period in question and, therefore, it is

concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982, through May 4, 1988, as required.

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.