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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC 02 183 63558

Office: NEW YORK Date: JAN 26 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:

[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.

 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 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, the applicant asserts that he has submitted sufficient evidence to establish his continuous residence since 1981. The applicant 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 May 12, 2007, the director stated that the applicant had failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted affidavits. However, the affidavits were neither credible, nor amenable to verification. The director granted the applicant thirty (30) days to submit additional evidence.

In her denial notice, the director noted that the applicant's response to the NOID consisted of two (2) affidavits. The director determined, however, that the evidence submitted was insufficient to overcome the reasons for denial. In the Notice of Decision, dated August 6, 2007, the director denied the application based on the reasons stated in the NOID.

On appeal, the applicant states that the director failed to use all available means to determine the truth, and that he has submitted sufficient letters and affidavits which establish that he has resided continuously in the United States since March 1981. With his appeal, the applicant submits evidence, including some of the same affidavits previously provided.

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 record reflects that the applicant submitted various items of evidence, including letters and several affidavits, to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Contrary to the applicant's assertion, he has submitted questionable documentation. On appeal, the applicant claims that he has resided in the United States since 1981, and he has submitted various letters and affidavits in support of his claim. However, the applicant has submitted three letters stating that he has been in the United States since 1983. Specifically, the applicant submitted these letters in connection with an application for permission to travel to Bangladesh. Two of the letters were written by the applicant, one dated March 16th 1998, and the other notarized on August 19, 1983. The third letter is from [REDACTED], the applicant's father, and is dated August 16th 1993. This contradicts the applicant's Form I-687 application, wherein he states that he departed the United States once, from December 1982 to January 1983. There is no indication in his Form I-687 application that the applicant had any other travel outside the United States. In that the

applicant submitted three (3) letters stating that he has been in the United States since only 1983, his claim that he has resided in the United States since March 1981, is questionable.

It is also noted that the record reflects that the applicant has used different names and dates of birth (DOB). In addition to the name " [REDACTED] " DOB: March 4, 1963, which the applicant used on his Form I-687 and on his Form I-485 applications, and on his passport number: [REDACTED] (issued on December 4, 1990), the applicant has used the name [REDACTED]

DOB: November 3, 1963, on his passport number: [REDACTED] with which he entered the United States, with an F-1 Visa, at Boston, Massachusetts, on September 2, 1989, The applicant also used the name " [REDACTED] " DOB: November 3, 1963, on passport number: [REDACTED] Given the various names, and dates of birth the applicant has used in his documentation, it is questionable whether the documentation he has provided in support of his application is genuine.

The above discrepancies add considerable doubt on whether any of the affidavits the applicant submitted to establish his continuous residence are genuine and whether the applicant has been in the United States since October 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 his testimony and 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.

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 affiants included any supporting documentation of the applicant'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.