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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED]
MSC 01 332 60268

Office: NEW YORK

Date: JUL 07 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. Grisson, 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 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 for the applicant asserts that the director erred in arbitrarily determining that the documents the applicant submitted were insufficient to establish his continuous residence, and states that the documents that he submitted are all authentic. Counsel, therefore, contends that the applicant has submitted sufficient credible evidence to establish his continuous residence from before January 1, 1982 through May 4, 1988. With his appeal, the applicant submits some of the same evidence earlier provided.

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 March 17, 2008, 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 granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated April 24, 2008, the director denied the instant application. The director noted that the applicant responded to the NOID but failed to submit sufficient evidence to overcome the reasons for denial stated in the NOID. The director determined that the applicant's claim lacked veracity and noted, specifically, that there were discrepancies regarding the applicant's claimed manner of entry, and various evidentiary items provided by the applicant in support of his application. 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.

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 evidence, including affidavits and letters, as evidence 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 counsel's assertion, the applicant has submitted questionable documentation. The applicant has submitted various affidavits attesting to his presence in the United States since July 1981. For example, in his affidavit notarized on April 14, 2004, the applicant attested that he shared an apartment with [REDACTED], from July 1981 to September 1984, and paid \$175.00 monthly rent; and, he provided two affidavits from [REDACTED], both dated May 19, 1990, in support of his claim. It is noted that in his affidavits, [REDACTED] attests to having known the applicant to have resided in the United States since July 1981. In one of his affidavits, [REDACTED] also attests that the applicant resided with him, as co-tenant, at an apartment located at [REDACTED] New York, NY 10024, from July 1981 to September 1984, and paid monthly rent of \$175.00. In his second affidavit, [REDACTED] also attests that the applicant resided at [REDACTED] NY 10024. However, the applicant provided affidavits that contradict both affidavits from Mr. [REDACTED] and the applicant's April 14, 2004 affidavit. For example, two affiants, [REDACTED] and [REDACTED], attest to having known the applicant to have resided in

the United States since July 1981, and listed the applicant's addresses of residence from July 1981 to the year 2000. Both [REDACTED], and [REDACTED], indicated that the applicant had resided at a different address: [REDACTED], from July 1981 until September 1984. There is no indication in the affidavits from [REDACTED], or [REDACTED], that the applicant ever resided at [REDACTED] New York, NY 10024, as attested to by [REDACTED] in his two affidavits. It is also noted that the applicant does not list [REDACTED], New York, NY 10024, as an address of residence. Yet, he has submitted the affidavits from [REDACTED] which contradicts his Form I-687 application, and the affidavits from [REDACTED] and [REDACTED]. Given the inconsistencies, discussed above, the testimony is deemed not credible.

These discrepancies cast doubt on whether the applicant's claim that he first entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. 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.

It is also noted that in her denial notice the director raised various additional credibility issues, such as pertains to the manner of the applicant's claimed entry in July 1981, with a visitor's visa; and, his claimed employment in 1987 which conflicts with the information the applicant provided on his Biographic Information, Form G-325A. However, given the discrepancies discussed above, and the fact that the applicant did not overcome these objections on appeal, the appeal will be dismissed.

As stated above, 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.