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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK Date:

JUL 13 2009

MSC 02 113 62577

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).

IN BEHALF OF APPLICANT:

[REDACTED]

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, the applicant puts forth the same brief and documents that were submitted in response to the Notice of Intent to Deny, and considered by the director in her decision to deny the application.

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided several affidavits of residence and employment letters.

The record, however, reflects that the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, on May 28, 1993. On Part C of the Form I-589, the applicant indicated that he was detained by the police in his native country, India, for one month in 1982 and in 1988 "I helped a lotto [REDACTED] foreign minister in the election. He helped, and issued me a letter to get the VISA for U.S.A." Part D of the form, asks the applicant if he has traveled to the United States before and the applicant indicated "no." At his asylum assessment interview on January 31, 1997, the applicant indicated that he was detained by the police in India for one or two days in 1986 and 1987.

On February 20, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of the inconsistencies and contradictions between his testimony, LIFE application and Form I-589. The director advised the applicant that based on the information listed on the asylum application and indicated at the time of his assessment interview, he was not continuously residing in the United States during the requisite period as claimed on his LIFE application.

The applicant, in response, submitted a brief indicating that he has submitted sufficient evidence to establish his continuous residence in the United States during the requisite period. In regards to his asylum application, the applicant asserted that there was no discrepancy with his Form I-589 "because there seems to be a miss-understanding [sic] of the facts. I came to the U.S. on or about May 1st 1981 and the reason I migrated to the U.S. was because of my political affiliation. I was simply afraid fro [sic] my life." The applicant further asserted, "[t]here is absolutely no solid backing that would question the veracity of my claim based on my testimony of being arrested in 1981. Because I honestly disclosed to the USCIS that I had visited India in 1987." The applicant asserted that he never traveled outside of the United States in 1986. Regarding his arrest in 1982, the applicant asserted, "[i]f in-fact my asylum application states 1982, then it is without complete qualification and simply a typo."

The AAO has considered the applicant's brief along with the affidavits submitted and does not view them as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988.

The applicant's assertions regarding absences from the United States in 1986 and 1987 are not supported by the record. The applicant claimed on his initial Form I-687 application signed May 14, 1991, to have been absent from the United States from June 1982 to July 1982. On his current Form I-687 application signed June 23, 2004, the applicant claimed one absence from the United States during the requisite period; June 1986 to July 1986.

As previously noted, Part D of the Form I-589 asks the applicant if he had traveled to the United States before and the applicant indicated "no." The applicant, in affixing his signature on the Form I-589 certified that the information he provided was *true* and *correct*. If incorrect information has been provided, it is reasonable to expect an explanation from the preparer in

order to resolve the discrepancies. No evidence, however, has been provided from the lawyer who was representing the applicant during this proceeding to corroborate the applicant's revised statements. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

These factors raise significant issue to the legitimacy of the applicant's residence in the United States during the requisite period, and tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

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).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that 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.

Finally, it is noted for the record that on December 8, 1999, the applicant's asylum application was withdrawn and the applicant was granted voluntary departure until October 8, 2000. The right of appeal was waived. The applicant departed the United States, but subsequently reentered and on February 11, 2002, a motion to reopen was filed before the immigration judge (IJ), which was denied on June 13, 2002. On July 15, 2002, the applicant appealed the IJ's decision to the Board of Immigration Appeals (BIA), which was dismissed on October 2, 2003. The applicant has filed three separate motions to reopen before the BIA, which have been denied on April 1, 2004, January 31, 2006, and June 15, 2007. The alien filed a petition for review before the United States Court of Appeals for the Second Circuit (Second Circuit). On September 9, 2005, the Second Circuit dismissed the petition for review and issued its mandate on November 4, 2005.

In addition, the record reflects that the applicant's Form I-687 application (MSC0427610294) was denied on December 19, 2005, and the appeal, which was filed untimely, has been rejected.

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