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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC 02 011 61195

Office: GARDEN CITY

Date:

JUN 02 2009

IN RE:

Applicant: [REDACTED]

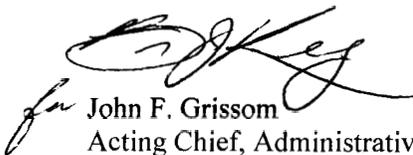
APPLICATION:

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).

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, Garden City, 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 asserts that the director did not give proper consideration to the evidence submitted by the applicant in support of his application. Counsel asserts that the applicant has met his burden of proof to establish his claim.

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).

It is noted that on April 18, 1997, the District Director, San Francisco, California issued a Notice of Intent to Revoke for this application, which was based on a legacy Immigration and Naturalization Service investigation called Operation Catchhold. The notice advised the applicant that he had been identified as procuring his Form I-688A through the payment of a bribe to the Salinas Chief Legalization Officer, who was working undercover in Operation Catchhold. The applicant was further advised that Federal Bureau of Investigations had identified 22 brokers who paid bribes to the Chief Legalization Officer on behalf of 1,370 applicants and that the brokers had been prosecuted and convicted. The applicant was informed that his application, with bribe payment, was earmarked and segregated and he was issued a Form I-688A, employment authorization card in conjunction with the filing of his Form I-687 application. However, the issuance of the employment card was not indicative of the *Catholic Social Services* class membership.

The applicant was given 18 days to submit a rebuttal. The applicant, however, failed to respond to the notice and on May 13, 1997, the applicant's work authorization and class membership was revoked and the file was permanently closed.

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.

On April 22, 1998, the applicant arrived at the John F. Kennedy International Airport and was referred to secondary inspection. The applicant admitted in sworn statement that he first entered the United States in April 1989 through the Mexican border.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- Affidavits from [REDACTED] of Richmond Hill, New York, and [REDACTED] of Woodside, New York who indicated that they have known the applicant since 1981 and used to visit the applicant at [REDACTED], Jersey City, New Jersey. [REDACTED] indicated that he first met the applicant at a Sikh Temple in Richmond Hill. Both affiants attested to the applicant's moral character.
- An affidavit from [REDACTED] who indicated that the applicant resided with him at [REDACTED] Jersey City, New Jersey from September 1981 to July 1989.

On February 6, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that of his sworn statement taken on April 22, 1998. The applicant was also advised that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. The applicant was given 30 days in which to submit a rebuttal. The applicant, however, failed to respond to the notice.

The director, in issuing her Notice of Intent to Deny, also drew extensively from the questions and answers provided at the time of the applicant's LIFE interview. However, neither the interviewing officer's notes nor a signed statement executed by the applicant corroborating the interviewing officer's questions, which would further impact adversely on the applicant's credibility, were incorporated into the record. Accordingly, the AAO finds that there is insufficient evidence in the record to support the director's findings that the applicant's oral testimony was inconsistent with other information in the record, and these findings are withdrawn.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits should be analyzed to determine if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. As previously noted, on April 22, 1998, the applicant arrived at John F. Kennedy International Airport and was referred to secondary inspection for completion of his inspection. The applicant admitted under oath in a sworn statement that he first arrived in the United States in April 1989.
2. On his Form I-687 application signed September 21, 1990, the applicant claimed no employment or residence in the United States during the requisite period.
3. None of the affiants provide any details regarding the nature of their relationship with the applicant or 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.
4. On his Form G-325, Biographic Information signed September 28, 2001, the applicant did not list [REDACTED] Jersey City, New Jersey as his address of residence during the 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, the record reflects that on April 5, 1994, the applicant was arrested by the Drug and Enforcement Agency in Melville, New York for a violation of the Federal Controlled Substance Act- distribution of heroin. On April 9, 1994, the charge was dismissed.

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