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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 211 62522

Office: NEW YORK

Date:

MAR 04 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).

ON BEHALF OF APPLICANT:

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.

A handwritten signature in black ink, appearing to read "John F. Grisson".

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 District 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant states that the director erred in not giving more weight to affidavits presented. Counsel resubmits some of the evidence previously submitted 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 July 17, 2006, 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 noted that the applicant submitted affidavits in support of his claim; however, attempts to contact two affiants, [REDACTED], and [REDACTED] were unsuccessful, and other affidavits submitted could not be verified. The director granted the applicant thirty (30) days to submit additional evidence.

The record reflects that the applicant's response to the NOID, through counsel, consisted of a letter from counsel providing current addresses and telephone numbers for [REDACTED] and [REDACTED]. Counsel states that the director failed to contact [REDACTED] an affiant who could verify the applicant's job history, and overlooked bank and utility records submitted by the applicant. With his response to the NOID, counsel resubmitted affidavits from [REDACTED] and [REDACTED]. All three affiants attest to knowing the applicant since 1981. No additional evidence was received.

In the Notice of Decision, dated August 23, 2006, the director denied the instant application based on the reasons stated in the NOID. The director also noted that the letter from [REDACTED] contradicted the applicant's testimony regarding his employment history. Specifically, the director noted that although [REDACTED]'s letter states that the applicant worked as a jeweler technician at his business, *Creations by [REDACTED]*, located at [REDACTED] New York, New York from September 1981 to January 1991, the applicant testified that he worked at [REDACTED] from 1981 to 1987.

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 affidavits, a telephone invoice, and copies of checks, as evidence to support his Form I-485 application. Here, the submitted evidence is not probative nor credible.

#### Employment Letter

The applicant submitted a March 12, 1991 letter pertaining to his employment by [REDACTED] owner of *Creations by [REDACTED]*. Mr. [REDACTED] states in his letter that the applicant often used a bench in his premises to make jewelry for himself during the period from September 1981 to January 1991.

However [REDACTED] failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). Mr. [REDACTED] also failed to specify the date in 1981 when the claimed employment commenced.

In addition, [REDACTED] did not indicate the conditions of the applicant's work or rental arrangements at *Creations by [REDACTED]*. Nor does [REDACTED] or the applicant, provide any documentation to support his claimed employment as a jeweler at *Creations by [REDACTED]* during the requisite period.

#### Affidavits

The applicant submitted a sworn affidavit from [REDACTED] attesting to having known the applicant since July 1, 1981. Mr. [REDACTED] states that the applicant resided at the following addresses: [REDACTED], Brooklyn, New York 11235; [REDACTED] # [REDACTED], Brooklyn, New York 11235; and, [REDACTED], Edison, New Jersey 08820. However, the affiant does not state whether he first met the applicant in the United States, nor does he indicate the dates when the applicant resided at any of these addresses. Also, the affiant does not state whether the applicant has been a continuous resident of the United States since that time.

The applicant also submitted a sworn affidavit from [REDACTED] who attests to knowing the applicant since 1981; [REDACTED] also states that the applicant shared a residence with him from July 1981 to July 1983, and that the applicant resided at the following addresses: [REDACTED], Brooklyn, New York 11235; [REDACTED], Brooklyn, New York 11235; and, [REDACTED], Edison, New Jersey 08820. However, the affiant does not indicate the dates when the applicant resided at any of these addresses or state whether the applicant has been a continuous resident of the United States since that time.

The applicant also submitted a sworn affidavit from [REDACTED] who attests to having shared an apartment located at [REDACTED], Brooklyn, N.Y. 11235, with the applicant from July 1983 until April 1985. However, the affiant does not state whether the applicant has been a continuous resident of the United States since that time.

It is noted that the applicant also submitted an affidavit from [REDACTED] dated January 10, 1990, which does not pertain to the requisite period of continuous residence. Mr. [REDACTED] states that the applicant resided with him at [REDACTED], Edison, New Jersey 08820, from January 1990. However, the affiant does not state whether the applicant has been a continuous resident of the United States since January 1, 1982.

In addition, the applicant submitted the following documents:

- 1) One page of a lease, dated January 24, 1986, for rental of the premises at [REDACTED] Brooklyn, New York, for the period from February 1, 1986 through January 31, 1987;
- 2) A Business Certificate, for a business designated as [REDACTED] located at [REDACTED] Brooklyn, New York, signed by [REDACTED], [REDACTED] Brooklyn, New York 11235, on July 5, 1985;
- 4) Copies of the front of four checks, one written to [REDACTED], dated in 1984 and three written to [REDACTED], dated in April 1984, October 1984, and in 1985. The checks do not indicate the applicant's address and there is no indication they were cashed by the payees;
- 5) A New York Telephone Company bill, dated June 7, 1985, showing the applicant's address as [REDACTED] Brooklyn, New York 11235;
- 6) An unclear PAN AM receipt, in the amount of \$853.00, dated July 27, 1987, indicating travel from New York to Karachi;
- 7) A handwritten certificate, dated in 1990, from [REDACTED] [REDACTED], located in Gujrat, India, pertaining to a hospital admission of [REDACTED] [REDACTED] from July 26, 1987 to August 17, 1987;
- 8) Copies of two envelopes, with unclear post date stamps, addressed to the applicant in Jackson Heights, New York; and,
- 9) Five photographs, two date-stamped January 1983, and three date-stamped in February 1983 depicting the applicant.

The documents, however, do not establish the requisite continuous residence as they do not, individually or cumulatively, cover the periods, of 1982, and February 1983 through April 1984.

Contrary to counsel's assertion, the applicant has not submitted sufficient documentation to establish the requisite continuous residence. 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 affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. 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.