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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 115 60746

Office: GARDEN CITY

Date:

MAR 16 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:

SELF-REPRESENTED

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, 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 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, the applicant states that the director erred in failing to verify the affidavits he submitted, and that he is qualified under the LIFE Act. The applicant submits additional documents 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).

In the Notice of Intent to Deny (NOID), dated November 19, 2007, 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 provided numerous affidavits and letters, however, these documents were neither credible, nor amenable to verification. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated January 16, 2008, the director denied the application for the reasons stated in the NOID, noting that the applicant responded to the NOID, but that his response failed to overcome the reasons for denial.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate his continuous residence in the United States in an unlawful status during the requisite period. In an attempt to establish continuous unlawful residence in the United States during the requisite period since prior to January 1, 1982, the applicant submits evidence, including letters, affidavits, and receipts to support his Form I-485 application. The AAO has reviewed the entire record. The evidence, however, is neither probative, nor credible.

The applicant has provided various items of evidence, including letters, and affidavits, in support of his application to establish his continuous residence. However, contrary to the applicant's assertion, he has failed to submit sufficient reliable evidence of his continuous residence in the United States throughout the requisite period. The applicant claims that he first entered the United States in January 1981, when he was 12 years old. During the years from 1981 through 1983 the applicant was less than 14 years old and would be required to attend school. However, the applicant does not submit any school records, nor does he provide an explanation as to why he is unable to provide his school records. The applicant submitted a photocopy of an unofficial college transcript for college course work, as a Chemistry major, completed from Spring 1991 through Fall 2001, which reveals that the applicant had completed 101 credits, and achieved a cumulative grade point average (GPA) of 3.038 as of the end of the 2001 Fall term. It is unlikely that the applicant would be able to achieve a 3.038 cumulative GPA, as a Chemistry major, in college, without completing secondary education, as there is no indication that the applicant completed secondary education, or was required to do college preparatory courses.

In addition, the applicant does not provide any documentation or explanation whatsoever of how he sustained himself from 1981, the year of his claimed entry, through 1988. During the years from 1981 through 1983 the applicant was less than 14 years old, and therefore, would have had to have been provided for and cared for by an adult. Yet, no documentation was provided from a caregiver.

It is noted that the applicant states on his Form I-687 that he had been employed, as a Cashier, by [REDACTED], from February 1981 to August 1984, and as a counter person by [REDACTED].

from November 1984 to September 1988, indicating that his employment began when he was 12 years of age. It is unlikely, however, that the applicant would be employed at such a young age, and be able to provide for himself at such a young age. Given these inconsistencies the evidence submitted is not credible.

In addition, the applicant submitted mail envelopes addressed to the applicant in the United States, date-stamped January 19, 1982, February 19, 1983, and April 14, 1985. The envelopes, however, are not probative as they do not bear U.S. postmarks, and their authenticity cannot be determined.

In addition, this lack of documentation, such as school records, without an explanation as to why these documents are not available, casts considerable doubt on whether the applicant resided in the United States since October 1980 as he claims, and whether the evidence he submitted, such as the numerous affidavits, and letters, attesting to his continuous residence during the requisite period, are genuine. 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.

The applicant has not provided any reliable evidence of residence in the United States. 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.