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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

MSC 02 037 60445

Office: NEW YORK

Date: MAR 18 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. 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 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, the applicant asserts that he has submitted sufficient evidence, in the form of numerous affidavits to support his application for LIFE Act application. The applicant submits additional evidence 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 December 31, 2007, the director stated that the applicant failed to submit sufficient credible evidence demonstrating that he entered the United States before January 1, 1982, and his continuous unlawful residence in the United States, during the requisite period. The director noted that the applicant submitted affidavits that were questionable. The director also noted that the applicant indicated during his interview on March 10, 2003, that he entered the United States in July 1981 without a valid non-immigrant visa, and subsequently, in January 1989, he entered the United States with a valid non-immigrant visa which was issued on February 3, 1988 in Abidjan, and that the applicant's passport was issued, in Abidjan, on January 16, 1986. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated February 6, 2008, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant failed to submit additional evidence in response to the NOID.

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 letters, affidavits, and other documents 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.

The applicant has submitted questionable documentation. The applicant has submitted numerous affidavits and letters attesting to his residence in the United States since January 1981. However, the record of evidence casts considerable doubts on whether any of these letters and affidavits are genuine. As noted above, the applicant testified during his interview on March 10, 2003, and the record of proceedings reflect, that he entered the United States in July 1981 without a valid non-immigrant visa, and subsequently, in January 1989, he entered the United States with a valid non-immigrant visa which was issued on February 3, 1988 in Abidjan, and that his passport was issued, in Abidjan, on January 16, 1986. However, on his Form I-687 application, the applicant indicated that since his entry in July 1981, he departed the United States once, in July 1987, to Canada, and returned to the United States on July 20, 1987. The record of evidence points to the applicant's presence in the Ivory Coast from January 1986 to January 1989. Therefore, the evidence provided

by the applicant, including affidavits and letters, in an attempt to establish his continuous residence throughout the requisite period is deemed not credible.

The above discrepancy casts considerable doubt on whether the applicant resided in the United States since December 1981 as he claimed. 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.

The record of proceedings also contains a letter, dated May 17, 1990, from [REDACTED] located at [REDACTED] New York, NY 10026. The letter states that "...[REDACTED] has been a member of the Muslim community since May 1981. He lives at [REDACTED]. He attends Prayer Services here at the Masjid and assists the Resident Imam." The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letter from [REDACTED] does not comply with the above cited regulations because it does not state the applicant's name or the address where the applicant resided during the attendance period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance records were referenced or otherwise specifically state the origin of the information being attested to. For this reason also, the letter is not deemed probative and is of little evidentiary value.

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.

The remaining evidence in the record does not establish the requisite continuous residence as it does not relate to the requisite period, and therefore, is not probative to establish the applicant's residence

since prior to January 1, 1982. The applicant has not submitted any additional evidence in support of his claim that he entered the United States prior to January 1, 1982, and he had resided continuously in the United States during the entire requisite period.

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.