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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Citizenship and Immigration Services
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

L2

[REDACTED]

FILE:

[REDACTED]

Office: GARDEN CITY

Date:

MAR 23 2009

MSC 02 121 61804

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, Garden City, 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 verifiable evidence to establish the requisite continuous residence. 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 July 3, 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 submitted affidavits that were unverifiable. The director also noted that the applicant stated that he had departed the United States, for Senegal, and returned on August 18, 1986; however, the applicant failed to provide evidence of the claimed travel, and that none of the affiants attested to his trip to Senegal in 1986. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated September 12, 2007, the director denied the instant application. The director noted that the applicant responded to the NOID, but, his response was insufficient to overcome the reasons for denial stated in 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 evidence, including letters and affidavits, 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 submitted the following:

1. A notarized letter and an affidavit, from [REDACTED], dated July 25, 2007, and October 9, 2007, respectively. In his July 25, 2007 affidavit, [REDACTED] attests that he has known the applicant to have resided in the United States since 1982 when they lived together at [REDACTED] located at [REDACTED], New York 10019. Mr. [REDACTED], however, does not indicate for how long he shared a room with the applicant; or, when in 1982 he first became acquainted with the applicant. In his October 9, 2007 affidavit, [REDACTED] attests to having known the applicant to have resided in the United States since November 1981, but states that he determined the date of his acquaintance with the applicant in January 1982. Also, the affiant does not indicate in any of the affidavits whether and how he maintained a relationship with the applicant; and, whether the applicant has been a continuous resident throughout the requisite period.
2. An affidavit from [REDACTED] attesting to having known the applicant to have resided in the United States since 1982. The affiant, however, does not provide details as to how he dates

his acquaintance with the applicant, and, whether and how frequently he had contact with the applicant during these years.

3. An affidavit from [REDACTED], attesting to having known the applicant to have resided in the United States since November 1981. Ms. [REDACTED] however, does not provide details as to how she dates her acquaintance with the applicant, except to state that it was in December 1981; and, whether and how frequently she had contact with the applicant during these years.

Contrary to the applicant's claim, the applicant has submitted questionable affidavits in an attempt to establish the requisite continuous residence. It is noted that the applicant indicated in his Form I-687 application that he had departed the United States, twice, from July 7, 1986 to August 1986, and from June 7, 1988 to July 21, 1988. However, both [REDACTED] (in his October 9, 2007 affidavit), and, [REDACTED], attest that two (2) months, in the year 2002, was the longest time they did not see the applicant. Also, in his first affidavit, [REDACTED] attests to having known the applicant to have resided in the United States since 1982; however, in his second affidavit [REDACTED] attests that he has known the applicant to have resided in the United States since November 1981, but states that "Jan. 1982" enables him to determine the beginning date of his acquaintance with the applicant. Similarly, [REDACTED] attests to having known the applicant to have resided in the United States since November 1981; however, she attests that "December 1981" enables her to determine the beginning date of her acquaintance with the applicant.

These discrepancies cast doubt on whether the affidavits submitted are genuine, and whether the applicant resided in the United States from November 1981 through the requisite period, as he claims. 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.

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.