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

PUBLIC COPY

22

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: MAR 23 2009

MSC 02 071 65243

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 requests that his application be reconsidered because the director mailed the notice of decision to the wrong address. The applicant does not submit 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 15, August 28, 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 affidavits from [REDACTED] and [REDACTED], submitted by the applicant in an attempt to establish his continuous residence, were fraudulent because of similar letters received from these businesses and the masjid. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated December 6, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but the information submitted was insufficient to overcome the reasons for denial stated in the NOID.

As noted above, the applicant requested that his application be reconsidered. It is noted that the director mailed a denial decision, dated November 2, 2007, to the applicant, which was addressed to an incorrect Zip Code. Evidently, the applicant received the November 2, 2007 denial notice and filed this appeal requesting that the director reconsider the decision. Subsequently, on December 15, 2007, the director reissued the Notice of Intent to Deny (NOID). In the NOID, 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 applicant responded to the NOID and submitted additional evidence with his response to the NOID. The director issued an amended decision, dated January 17, 2008 which was mailed to the applicant's address of record (which is also the applicant's current address), [REDACTED] Bronx, NY 10468. In her amended decision, the director noted that the applicant responded to the NOID but failed to overcome the reasons for denial as stated in the NOID. However, the AAO will review the matter on a *de novo* basis and issue a new decision.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d

Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

Upon a *de novo* review of all of the evidence in the record as it pertains to the requisite continuous residence, the AAO finds that the evidence submitted does not establish that the applicant is eligible for the benefit sought.

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. Here, the submitted evidence is neither probative, nor credible.

The applicant has submitted questionable documentation. In an attempt to establish his continuous residence during the requisite period, the applicant submitted affidavits and letters, including letters from [REDACTED] and [REDACTED]. The letter from [REDACTED] states that the applicant shared a room with a friend from January 1984 until March 1984; the letter from [REDACTED] states that the applicant resided at the hotel from April 1984 to July 1986; the letter from [REDACTED] states that the applicant resided at the hotel from July 1986 to December 1988; and, the letter from [REDACTED] states that the applicant had been a member since January 1981. The letters from [REDACTED] and [REDACTED] however, are questionable, and have been deemed fraudulent, because previous applicants have presented affidavits of the same type from these establishments. Therefore, these letters are not credible and are not probative.

In addition, the applicant claims that he has resided in the United States since January 1981, and he indicated on his Form I-687 application, signed January 16, 1991, that since his entry he had departed the United States once, for Canada, in January 1988 and returned to the United States in February 1988. However, the record reflects that the applicant's passport was issued in Dakar, Senegal, on August 9, 1988, and he was issued an F-1 visa at the US embassy, in Dakar, on February 15, 1989. Clearly, the applicant has misrepresented his travel history on his Form I-687 application, and raises doubts as to whether the remaining content of his application is true.

The above discrepancies cast considerable doubt on whether the applicant resided in the United States from 1981 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

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

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.