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FILE: [REDACTED]
MSC 02 239 60683

Office: GARDEN CITY

Date: **MAY 01 2009**

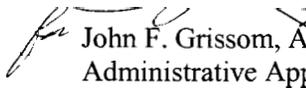
IN RE: Applicant: [REDACTED]

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: 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, A 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 evidence to establish his 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 June 22, 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 neither credible, nor amenable to verification. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated August 16, 2007, 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.

On appeal, the applicant stated that he did not receive the NOID, and therefore, he did not have an opportunity to provide additional evidence in response to the NOID. The AAO notes that both the NOID and the notice of decision were mailed to the applicant's address of record, and the applicant received the notice of decision, but, the NOID was returned as undeliverable. Nevertheless, on March 24, 2009, the AAO provided the applicant with a copy of the NOID, and the applicant was granted 30 days to respond and submit additional evidence. The record reflects that on April 10, 2009, the applicant responded to the NOID and provided additional evidence. The record is, therefore, considered complete.

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

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 affidavits, and letters, as evidence to support his

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).

Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Employment Letters

The applicant submitted a letter of employment, from [REDACTED], Secretary, of Abdul Enterprises, Inc., Lucy's Pizza Parlor, located at [REDACTED] Mr. [REDACTED] states that the applicant had been employed full-time as a bus boy and kitchen helper from June 23, 1981 to May 31, 1987.

It is noted however, that the letter failed to provide the applicant's address at the time of employment. Also, the letter failed to 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). The letter, therefore, is not probative as it does not conform to the regulatory requirements.

Affidavits & Letters

The applicant submitted the following:

1. An affidavit from [REDACTED], attesting that he has known the applicant to have resided in the United States since March 1981. [REDACTED] also states that the applicant used to pray together and continues to pray together. The affiant, however, does not indicate how he dates his acquaintance with the applicant, how frequently he had contact with the applicant, nor does he provide details, such as the location and times he and the applicant prayed together.
2. An affidavit from [REDACTED] attesting that the applicant had been one of his tenants at [REDACTED] from August 1987 to December 1989. The affiant, however, does not provide any additional details, such as the terms of the rental arrangement.
3. An affidavit from [REDACTED] attesting that he has known the applicant to have resided in the United States since 1981. [REDACTED] also states that the applicant used to visit his residence in Brooklyn. The affiant, however, does not provide any additional details, such as how he dates his acquaintance with the applicant, how frequently, and under what circumstances he had contact with the applicant since 1981.
4. An affidavit from [REDACTED] attesting that he and the applicant worked together at Lucy's Pizza Parlor, located at [REDACTED] from 1982 to 1987. [REDACTED] also attests that he and the applicant resided together at the basement of the store. The affiant, however, does not provide details, such as when in 1982 he met the applicant, and when in 1987 he last had contact with the applicant.
5. An affidavit from [REDACTED], attesting that in 1981 the applicant resided at [REDACTED] Mr. [REDACTED] also attests that the applicant moved to [REDACTED]

Connecticut in 1982. The affiant, however, does not indicate how he dates his acquaintance with the applicant, when in 1981 he first met the applicant, how frequently he had contact with the applicant, when in 1982 the applicant moved to Connecticut, and whether and how he had contact with the applicant during that time.

Contrary to the applicant's assertion, the affidavits lack detail. Over all, the affiants do not provide details as to how they date their acquaintance with the applicant, and, whether and how frequently they had contact with the applicant during these years.

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.

In addition, the applicant has submitted questionable documentation. For example, the applicant provided an affidavit from [REDACTED], attesting that he and the applicant worked together at Lucy's Pizza Parlor, located at [REDACTED] from 1982 to 1987, and that they resided together in the basement of the store. The applicant also provided an affidavit from [REDACTED], attesting that in 1981 the applicant resided at [REDACTED] Brooklyn, NY 11205, and that the applicant moved from New York to Connecticut in 1982. The affiant, however, indicates on his Form I-687 application that he resided at [REDACTED] from June 1981 to July 1987, and there is no indication on his Form I-687 application that the applicant ever resided in Stamford, Connecticut. In addition, the applicant claims that he first entered the United States in March 1981, and he provided an affidavit from [REDACTED] attesting that he has known the applicant to have resided in the United States since March 1981. However, the applicant does not indicate an address in the United States prior to June 1981 on his Form I-687 application.

The above discrepancies add considerable doubt on whether any of the affidavits he submitted to establish his continuous residence are genuine and whether the applicant has been in the United States since March 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 his testimony and 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.

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.