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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
MSC 01 327 60032

Office: NEW YORK

Date: MAY 04 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, 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.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

On appeal, the applicant asserts that he has submitted sufficient 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 February 8, 2008, 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 affidavits, letters, and other evidence submitted were neither credible nor amenable to verification. The director also noted that the applicant submitted Form I-687 applications with inconsistent dates of entry, and, dates of departure and return to the United States. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated March 4, 2008, 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 evidence provided failed 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.

Employment Letters

The applicant submitted two letters of employment, dated February 19, 2008, and one undated, from [REDACTED], of [REDACTED] located at [REDACTED], Brooklyn, NY 11233, stating that the applicant had been employed as a supervisor from January 1984 to February 1988. In his undated letter [REDACTED] also states that the applicant also worked as a painter depending on their construction schedule. It is noted that the February 19, 2008 letter is not on letterhead; and, the letters do not indicate the date employment commenced or the date employment ended.

It is also noted that the letter failed to provide the applicant's address at the time of employment, 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. A letter, dated March 1987, from [REDACTED] Manager, Essex House, located at West Orange, New Jersey, stating that the applicant had been residing at [REDACTED], located West Orange, New Jersey, since August 15, 1981.
2. Affidavits from [REDACTED] and [REDACTED] Ms. [REDACTED] attests to have known the applicant to have resided in the United States since November 1981; and, [REDACTED] attests that he has known the applicant to have resided in the United States since November 1981. Both affiants also attest that between 1981 and 1990, they saw the applicant every month; and that they went to events, such as shopping, dining, picnics, and going to the movies, with the applicant. The affiants, however, do not provide details, such as to indicate how they date their acquaintance with the applicant, under what circumstances they saw the applicant every month, what relationship they had that prompted participating in social events such as shopping, dining, picnicking, and going to the movies, with the applicant.
3. A note, dated April 14, 1987, from [REDACTED], stating that he first saw the applicant on November 22, 1982 and that the applicant was last seen on April 14, 1987. [REDACTED] however, does not indicate how he dates his acquaintance with the applicant, whether and under what circumstances he had contact with the applicant between November 22, 1982, and April 14, 1987.

In addition the applicant submitted two invoices for medical services from Montclair Radiological Associates, P.A., for an x-ray on July 13, 1987; two invoices from [REDACTED] dated May 15, 1987, and June 14, 1987, respectively; three U.S. Postal money order receipts dated, in February 1987; a telephone bill dated December 10, 1987; an apartment lease, dated December 29, 1987, for an apartment located at [REDACTED]; a bank deposit ticket dated June 24, 1987; and, a letter from AT&T, dated July 26, 1987. These documents pertain to the year 1987, and are not probative of the applicant's continuous residence for any other year.

Also, the applicant submitted 18 envelopes addressed to him in the United States. Two (2) of the envelopes are date-stamped in 1987 and bear U.S. postmarks. Of the remaining envelopes nine (9) do not have discernable postmarks, and four (4) are date-stamped in 1990. The remaining envelopes are date-stamped in 1981, 1982, 1983, are not probative as they do not bear U.S. postmarks.

Contrary to the applicant's assertions, as discussed above, the evidence submitted is lacking in detail. Therefore, the evidentiary items provided do not, individually, or cumulatively, establish the requisite continuous residence.

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.