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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
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: WEST PALM BEACH

Date: MAY 06 2009

MSC 02 176 64958

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 in West Palm Beach, Florida. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the interviewing officer confused the applicant during the interview and forced the applicant to sign a sworn statement that contained incorrect information about the applicant. The applicant requested a copy of the record of proceedings (ROP) and additional time to file a brief which would “clarify and verify his claim for favorable adjustment under the LIFE Act.” The ROP was proceeds and all documents sent to counsel February 9, 2008. To date, the AAO has not received any additional evidence from counsel. The record will be considered complete and the AAO will adjudicate the application based on the evidence of record.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

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 its amenability to verification. *See* 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.

The applicant, a native of Trinidad and Tobago who claims to have lived in the United States from before January 1, 1982, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on March 25, 2002.

The record reflects that the applicant was interviewed for his LIFE legalization application on June 20, 2006. On that same date, the applicant signed a sworn statement stating that he first entered the United States in October 1984, through Miami, Florida and was admitted as a visitor. The applicant also stated that he traveled outside the United States three times, the first was around 1986 and returned in June 1988. The applicant stated that he does not remember the dates for the two other trips. The record also reflects that the applicant’s attorney was present at the interview on June 20, 2006.

On June 20, 2006, the director issued a decision denying the application on the ground that the applicant is not eligible for adjustment of status based on the fact that by his own admission, he did not enter the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988. The director cited the applicant's sworn statement on the same date that he first entered the United States in 1984 and was admitted as a visitor.

The applicant timely filed an appeal. On appeal, counsel asserts that the interviewing officer confused the applicant during the interview and forced the applicant to sign a sworn statement that contained incorrect information about the applicant. Counsel requested a copy of the record of proceedings (ROP) and additional time to file a brief which would "clarify and verify his claim for favorable adjustment under the LIFE Act." The record reflects that the ROP was processed and all documents sent to counsel on February 9, 2008. To date, the AAO has not received any additional evidence from counsel. The record will be considered complete and the AAO will adjudicate the application based on the evidence of record.

The AAO notes that on appeal, counsel did not submit any documentation to support his assertion that the interviewing officer committed errors during the interview to the applicant's detriment and that the interviewing officer forced the applicant to sign a false document. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record reflects that counsel was present at the interview on June 20, 2006, thus, his claims are not credible.

The AAO maintains plenary power to review each appeal 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 AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since before January 1, 1982, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following six or seven years through May 4, 1988.

The file contains documentation that calls into question the veracity of the applicant's claim that he entered the United States before January 1, 1982, resided continuously in the country in an unlawful status from before January 1, 1982 through May 4, 1988. For example, in addition to the sworn statement dated June 20, 2006, discussed above, a copy of the applicant's expired passport shows that he was issued a passport in Trinidad and Tobago on July 24, 1984, and a multiple entry non-immigrant B-1/B-2 visa at The United States Embassy in Port-of-Spain on June 1, 1988, valid indefinitely, which the applicant used to enter the United States several times during from 1988 to 1989. Records from United States Immigration and Naturalization Services (INS) Non-Immigrant Information System (NIIS) documented two entries into the United States by the applicant. The first entry was on August 13, 1988, through Miami, Florida with a B-2 visa. The record indicated that the applicant departed the United States on August 27, 1988. The next documented entry was on November 24, 1989, through Miami, Florida with a B-2 visa. There is no documented departure following this last entry in 1989. The pages of the passport contain numerous entry and exit stamps in 1984 and 1988 from Trinidad and Tobago, Barbados and the United States. On the Form I-687 (application for status as a temporary resident) the applicant filed in March 1990, the applicant stated that he traveled outside the United States during the following periods in the 1980s:

From September 10, 1984 to October 10, 1984, to Trinidad for vacation;
From May 25, 1988 to June 5, 1988, to Trinidad for vacation;
From August 1988 to August 13, 1988, to Trinidad for vacation; and
From November 15, to November 24, 1989, to Trinidad for vacation.

The trips listed above did not account for all the stamps on the passport. For example, a stamp by the immigration officer in Trinidad and Tobago on page 7 of the passport shows that the applicant entered the country on August 27, 1988, and another stamp by the immigration officers in Trinidad and Tobago on page 6 of the passport show that the applicant left the country on September 2, 1988. These two dates are in conflict with the record of the applicant's residence in the United States as shown by the list above. According to the list, the applicant should have been resident and present in the United States at the time he entered Trinidad on August 27, 1988 and departed Trinidad on September 2, 1988. The contradictions in the record regarding the applicant's initial entry into the United States and his continuous residence in the country, and the total lack of any documentation to establish that the applicant was in the United States before January 1, 1982, casts considerable doubt on his claim that he met the residence requirement for legalization under the LIFE Act.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Furthermore, the applicant has failed to submit any evidence of his residence in the United States during the 1980s. Thus, 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 for legalization under the LIFE Act.

For the reasons discussed above, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.