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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: MAY 0 8 2009
MSC 02 246 64073

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).

IN 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.

for 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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that because the director failed to consider the arguments raised by the applicant in response to the Notice of Intent to Deny, his decision should be reversed.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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.

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. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- An affidavit from a relative, , who indicated that the applicant was a roommate at **Chicago, Illinois** from June 1980 to January 1990.
- Several rent receipts dated during the requisite period for property at
- Several pay stubs dated in September 1985 and October 1985.
- A receipt dated July 18, 1985, for an identification card issued by the California Department of Motor Vehicles (DMV).
- A bank statement issued in 1981 from Universal Savings & Loan Assn. in Chicago, Illinois.
- An identification card issued for the summer of 1980 from the Chicago Urban Skills Institute.
- A Selective Service System form dated June 18, 1984.
- Wage and tax statements for 1980 and 1982 from The Chicago Paper Tube & Can Co., Inc., in Chicago, Illinois.
- A statement from April 26, 1990 from who indicated that the applicant was employed by Chicago Paper Tube & Can Co., Inc. from October 16, 1980 to December 20, 1984.

The applicant also provided an additional wage and tax statement from The Chicago Paper Tube & Can Co., Inc., in Chicago, Illinois; however, it has little probative value as the year on the tax statement is obscured and the Form 1040A included in the record has not been certified as being filed.

On August 23, 2007, the director issued a Notice of Intent to Deny, which advised the applicant, in pertinent part:

> Based on the documentation in your file, you have used other names, attempted to enter the United States using false documentation, used false documentation to substantiate your first legalization application, and reentered the United States without inspection after removal. These actions establish that you are inadmissible to the United States.

> On December 8, 1995, you presented a counterfeit residence alien card (I-551) card in an attempt to enter the United States. You were ordered excluded from the United States. On August 18, 1999, you applied for admission into the United States by presenting a Border Crossing Card (I-586), which was not lawfully issued to you.

The record reflects that on December 8, 1995, the applicant was apprehended at the San Ysidro Port of Entry and charged with attempted illegal entry. On December 18, 1995, an exclusion proceeding was held before the immigration judge and the applicant was ordered excluded and deported from the United States.[1]

The record also reflects that on August 19, 1999, the applicant was apprehended at the San Ysidro Port of Entry and charged with attempted illegal entry into the United States from Mexico and imposter on Form I-586. The applicant was served with a Form I-860, Notice and Order of Expedited Removal, and expeditiously removed from the United States.

The fact that the applicant was removed under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), and then reentered without permission under section 212(a)(9) of the Act, renders him inadmissible. The record reflects that on April 16, 2003, the applicant filed a Form I-690, Application for Waiver of Grounds of Excludability. The record does not reflect the director has adjudicated the waiver and, therefore, the applicant remains inadmissible as of the date of this decision.

The director, in issuing her Notice of Intent to Deny, also advised the applicant that he had failed to establish that he continuously resided in the United States since January 1, 1982 to the date of filing his application.

An applicant for permanent residence under the LIFE ACT is not required to establish residency for the statutory period from January 1, 1982 to the date of filing his application. The regulation provides that the applicant must establish continuous residence through May 4, 1988. 8 C.F.R. § 245a.11(b) and (c).

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of *continuous* residence in the United States from 1980 through 1982. The AAO, however, does not view the documents discussed above as substantive enough to support a finding that the applicant *continuously* resided in the United States from 1983 through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

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[1] At the time of his apprehension, the applicant was assigned alien registration number The documents pertaining to his apprehensions on December 8, 1995, and August 19, 1999, have been consolidated into his LIFE application.

The rent receipts raise question to their credibility as: 1) the applicant claimed to have resided at from December 1979; however, *four of the receipts were dated prior to* December 1979; 2) the receipts were new for the time period they were purportedly issued; and 3) the payments ranged from $50 to $120 *per day*.

The document from the Selective Service System only serves to establish the applicant's presence in the United States on June 18, 1984, and the photocopied pay stubs only serve to establish that the applicant was employed during September and October 1985; they do not establish continuous residence during the requisite period.

The applicant claimed to have resided in Chicago, Illinois throughout the requisite period; however, he provided documentation from the California DMV reflecting a place of residence in the state of California.

The employment letter from failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to 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 claimed on his Form I-687 application to have also been employed at The Chicago Paper Tube & Can Co., Inc., in 1983 and 1984, and with from 1984 to January 1990; however, he provided no evidence to support these claims. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). It is unclear why the applicant would keep tax statements for the earlier years, but not documentation during the latter part of the requisite periods. As the applicant has maintained the same social security number from 1980 to 1995, the applicant could have obtained a printout of his earnings from the Social Security Administration.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988). The applicant submitted no competent objective evidence resolving the inconsistencies in the record and showing that he was continuously residing in the United States from 1983 to May 4, 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20

I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.