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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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FILE: [REDACTED] MSC 02 039 63944

Office: NEW YORK

Date:

OCT 02 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:



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.

Perry Rhew
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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. Specifically, the director found that the applicant was statutorily ineligible for benefits under the LIFE Act. Further, the director found that the applicant failed to establish continuous unlawful residence throughout the statutory period, and that the applicant submitted fraudulent documentation including a counterfeit I-94 card, affidavits from persons whose names and addresses were falsely identified, and an altered receipt from the United States Department of State. The director found that the applicant was inadmissible, as he misrepresented a material fact to gain a benefit under the Immigration & Nationality Act (Act), section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

On appeal, counsel asserts that the director failed to properly consider the evidence. Counsel states that the director did not give sufficient weight to the affidavits, to the applicant's testimony and to the Form I-485 application, which were consistent, and to the employment letters. Counsel does not address the director's specific concerns about the submission of fraudulent materials.

On appeal, the applicant requests a copy of the record of proceedings (ROP) under the Freedom of Information Act (FOIA) and states that he will file a brief within 30 days of receipt of the ROP. The record reflects that on August 5, 2007 the FOIA request was closed due to the applicant's failure to comply.

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 director found that the applicant was statutorily ineligible for benefits under the LIFE Act. An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("CSS"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509

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).

U.S. 43 (1993) (“*LULAC*”), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (“*Zambrano*”). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10. As the applicant timely filed a written claim to class membership, the AAO finds that the applicant is a class member and withdraws the finding of the director to the contrary.

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 or 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).

In the Notice of Intent to Deny (NOID), the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite

period. The director noted that the applicant submitted fraudulent documentation including a counterfeit I-94 card, affidavits from persons whose names and addresses were falsely identified, and an altered receipt from the United States Department of State in Egypt. The director granted the applicant thirty (30) days to submit additional evidence. The applicant did not submit evidence in response to the director's NOID. In the Notice of Decision (NOD), the director denied the application based on the reasons stated in the NOID, and again noted the specific instances of fraud. On appeal, the applicant does not contest the director's findings of fraud.

The record contains an original Form I-94 card in the applicant's name, submitted by the applicant in support of his claim that he left the United States briefly in 1987. In the NOID and the NOD, the director indicated that the number of the stamp, 884*[illegible final digit] was counterfeit. The director stated that the New York office of the Immigration & Naturalization Service (INS) (now United States Citizenship & Immigration Services (USCIS)) had never issued a stamp in the 8000 series, and that although it had used the stamp number 884, that number was taken out of service in 1977. The record also contains an original receipt from the U.S. Embassy in Alexandria, with a date that appears to have been altered. The applicant submitted this receipt into the record as proof that he obtained a nonimmigrant B2 visa in Egypt in November, 1987. The director notified the applicant in the NOID and the NOD that the receipt was apparently altered.

The record does not contain any explanation for these anomalies noted by the director, calling into question the veracity of the remaining evidence submitted by the applicant. 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 unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 of employment and other statements as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

The letters from

, and indicate that the affiants have known the applicant for years and that they attest to the applicant being physically present in the United States during some or all of the required period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or

her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant submits a letter from [REDACTED] indicating that the applicant was examined by him on several dates beginning in December 1986 through October 1989. The doctor does not reference the source of his information and does not submit medical records. The evidence will be given nominal weight.

The applicant also submitted statements from former employers. [REDACTED] states that the applicant worked at the [REDACTED] from January 1987 to December 1989. [REDACTED] and [REDACTED] state that the applicant worked at the [REDACTED] from June 1985 - December 1986. [REDACTED] states that the applicant worked for the [REDACTED] from January 1984 - May 1985. [REDACTED] states that the applicant worked for the [REDACTED] from January 1981 - December 1983. 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. As the letters do not comply with this regulation, they will be given nominal weight.

The applicant also submitted a letter from [REDACTED] of the Islamic Cultural Center of New York stating that the applicant has been a member of the mosque since 1981. The applicant does not list his association with this mosque on either of the Forms I-687. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. As the letter from [REDACTED] does not comply with any of the requirements of this regulation, it will be accorded nominal weight.

Other items of evidence include a diploma from the Translation & Interpretation Institute dated December 9, 1982 and a 1983 gas bill. The applicant's name on the gas bill appears to have been entered in a different type face than the gas bill. The diploma does not indicate the address of the institute nor the dates the applicant attended. The AAO will accord no weight to this evidence.

Although the applicant has submitted numerous letters in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. None of the letters indicate how the author dated his or her acquaintance with the applicant, how he or she met the applicant or how frequently he or she saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the submission of counterfeit and altered evidence seriously detract from the credibility of his claim. 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 counterfeit and altered documents and on 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 December 31, 1987.

The director found that the applicant is not eligible for permanent resident status under the late legalization provisions of the LIFE Act because the record indicates that he is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The director indicated in the NOID and the NOD that the applicant had falsified records to establish his one month absence from and reentry into the United States in November 1987. The applicant did not deny this claim in the rebuttal or on appeal. Thus, the applicant is attempting to procure an immigration benefit by willfully misrepresenting a material fact. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 is admissible to the United States. *See* 8 C.F.R. § 245a.12(e). The applicant might only overcome this particular ground of inadmissibility if he applies for and secures a waiver for the ground of inadmissibility at issue in the matter. *See* 8 C.F.R. § 245a.18(c). The record indicates that the applicant submitted the Form I-690, Application for Waiver of Grounds of Excludability, which is the form an applicant must file to request a waiver of the ground of inadmissibility set forth at section 212(a)(6)(C)(i) of the Act. However, the director has not adjudicated this application, and the applicant remains inadmissible and thus not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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 the requisite period, 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.