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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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Services

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[REDACTED]

FILE: [REDACTED] Office: NEW YORK  
MSC 02 115 60289

Date: **SEP 08 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:

[REDACTED]

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 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.

On appeal, counsel for the applicant states that the applicant submitted sufficient evidence to establish the requisite continuous residence. Counsel does not submit 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 September 14, 2007, the director stated that the applicant failed to submit evidence demonstrating her continuous unlawful residence in the United States throughout the requisite period. The director noted that the applicant had submitted questionable evidence for the period prior to 1984, such as a receipt from Delgado Travel, Inc., dated November 2, 1982, which the director deemed fraudulent because the receipt showed an address in Jackson Heights in Queens, New York, and a telephone number with a "718" area code. However, that area code did not exist until September 1984. Another example, in an affidavit from [REDACTED], the affiant states that he has known the applicant since 1981, however, he also states that he met the applicant in 1987. The director also noted that the applicant indicated on his G-325A, dated November 25, 1997, that his address, from birth to 1984, had been Cuenca, Ecuador. In addition, the director questioned the applicant's claim noting that on his Form I-687, the applicant indicated only one departure, in November 1988, since his arrival in the United States. However, the applicant asserted, under oath, that he had been turned away by an INS agent, or a Qualified Designated Entity (QDE), because of travel outside the United States prior to May 4, 1988. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated January 9, 2007, the director denied the application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but did not provide new evidence, and did not address the discrepancy in the Form - 325A. Instead, the applicant's attorney stated that the discrepancy in the Form I - 687 was caused by an error in the Lexis/Nexis Software used to prepare the application. The director pointed out, however, that the applicant signed both the Form G-325A and the Form I - 687, and therefore, is responsible for the information contained therein.

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.<sup>1</sup>

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<sup>1</sup> 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

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 and affidavits as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

As determined by the director, the applicant has submitted sufficient credible evidence for the period from 1984. However, contrary to counsel's assertions, the applicant has submitted questionable documentation of his claimed residence prior to 1984, and therefore, has failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status throughout the requisite period. Specifically, the applicant has submitted questionable evidence for the period prior to 1984. For example, the receipt from Delgado Travel, Inc., dated November 2, 1982, is clearly fraudulent because the receipt shows an address in Jackson Heights in Queens, New York, and bears a telephone number with a "718" area code. However, that area code did not exist for the Queens, New York, area until September 1984, two years after the date of the receipt. Also, the applicant submitted an affidavit from [REDACTED] stating that he has known the applicant to have resided in the United States since 1981. [REDACTED] however, contradicts himself and also states that he met the applicant in 1987 when he gave the applicant a ride to San Diego. In addition, the applicant submitted an affidavit from [REDACTED] who also states that he has known the applicant to have resided in the United States since 1981. [REDACTED], however, also contradicts himself and states that when he was with [REDACTED] when he met the applicant in 1987 when [REDACTED] gave the applicant a ride to San Diego.

In addition, the applicant has provided radically different information which contradicts his claim. The applicant indicated on his G-325A, dated November 25, 1997, that from birth to 1984 his address was Cuenca, Ecuador; and, on his Form I-687, filed on November 15, 2005, the applicant indicated only one departure, in November 1988, since his arrival in the United States. However, the record reflects that on a Form I-485, which the applicant submitted in December 1997, (under [REDACTED] the applicant stated that 1984 was his last date of arrival. Yet, as noted by the director, the applicant asserted, under oath, that he had been turned away by an INS agent, or a Qualified Designated Entity (QDE), because of travel outside the United States prior to May 4, 1988.

The above discrepancy casts doubts on whether the applicant has been in the United States since 1981, and whether the applicant departed the United States 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

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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).

the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, it is noted that the affiants did not include any supporting documentation of the affiant's presence in the United States 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.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.