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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

L2

[redacted]

FILE: [redacted] Office: CHICAGO Date: AUG 3 1 2010

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.

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 in Chicago, Illinois. 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 demonstrate a minimal understanding of ordinary English and knowledge of civics and history of the United States. The director indicated that the applicant was interviewed for a second time on September 11, 2003. During this interview, the applicant failed to demonstrate a minimal understanding of ordinary English and knowledge of civics and history of the United States.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO issued a Notice of Intent to Deny (NOID) on July 19, 2010, finding that the record of proceedings did not contain the date of the first interview or the Form G-56 Notice of Interview. The AAO noted that, while it was unclear at this time whether the applicant was tested on two occasions, six months apart, the applicant failed to submit sufficient evidence of his continuous residence throughout the relevant period. The AAO provided the applicant 20 days to submit the necessary evidence. The applicant failed to submit any additional evidence or information which addressed the deficiencies in the NOID. Thus, the appeal will be dismissed.

An applicant for permanent resident status 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).

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 under the provisions of section 212(a) of the 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).

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. 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 "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 petitioner 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 petitioner 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 or petition.

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) continuously resided in the United States in an unlawful status throughout the relevant period since that date. The documentation contained in the record which pertains to this period consists of the following:

- Registered mail and bank receipts with various dates in years 1983 through 1988. While these receipts do provide some evidence of the applicant's presence in the United States on particular days during the relevant period, they do not offer evidence of continuous residence. Furthermore, on his Form I-687 the applicant indicates that in 1985 he moved from [redacted]n Chicago, Illinois. However, the receipts dated in 1986 do not reflect the new address.

- A letter from [redacted], indicating that the applicant worked for [redacted] as a dishwasher from 1980 throughout the relevant period. This letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by Mr. [redacted] does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

- [redacted] provide affidavits both indicating that they met the applicant in 1981 and that they are good friends. They too fail to indicate how they date their

initial acquaintance with the applicant or how they have direct personal knowledge of his continuous residence in the United States.

- submits an affidavit indicating that the applicant was her tenant living at Illinois from 1982 until 1990. This is inconsistent with the addresses that the applicant provides on his Form I-687 in which he indicates that he lived at that address from 1980 until 1985 and that he moved to Chicago in 1985.

To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows you and that you have 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.

While the applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few of the affiants provided much relevant information beyond acknowledging that they met the applicant during the relevant period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--, supra.* The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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