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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:

MSC 02 032 61360

Office: NEW YORK, NY

Date: FEB 26 2010

IN RE:

Applicant:

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 forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

Eizabeth McCormack

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, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director found that the evidence submitted to establish the applicant's residence in the United States from a date prior to January 1, 1982 through May 4, 1988 was not sufficient to establish continuous residence. Therefore, the director denied the application.

On appeal, the applicant asserted that the record did include sufficient evidence to establish that he had resided continuously in the United States in an unlawful status throughout the entire statutory period.

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

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 through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) 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 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated by the regulations 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).

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

Documentary evidence may be in the format prescribed by U.S. Citizenship and Immigration Services (USCIS) regulations. *See id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. In evaluating the evidence, *Matter of E-M-* also states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. 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 or 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

On or near April 2, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On November 1, 2001, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The director issued a notice of intent to deny (NOID) in which she indicated that she intended to deny the application because the applicant had not established that he resided continuously in the United States during the statutory period. She stated that there were discrepancies in his evidence. For example, she indicated that the address listed in the employment letter in the record from [REDACTED]

██████████ is not an address associated with this pharmacy. This point in the NOID is withdrawn. A search which the AAO conducted at the New York Department of State Division of Corporations website: http://appsect8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry indicates that from 1951 through ██████████. was located at ██████████ the address listed in the letterhead stationery of the ██████████ employment letter in the record.

The director issued a notice of decision in which she denied the application based on the reasons set forth in the NOID.

On appeal, the applicant asserted through counsel that the evidence of record does establish that he resided continuously in the United States in an unlawful status throughout the statutory period and that he had provided consistent, detailed evidence.

At issue in this proceeding is whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988.

On December 8, 2009, this office issued a notice of intent to dismiss which stated that the record includes the following adverse or inconsistent evidence regarding this point:

1. The Form I-687, Application for Status as a Temporary Resident, that the applicant signed under penalty of perjury on April 2, 1990, on which he stated at item 33, where he was to list all his residences in the United States since his first entry, that he resided at ██████████ from December 1980 through December 1989; and at ██████████ from January 1990 through the date that he signed that form.
2. The statement of ██████████ dated April 2, 1990 on which ██████████ stated that he has resided at ██████████ for the past ten years, and that the applicant was his roommate at this address from November 1986 through the date that he signed that form.
3. The results from the AAO's attempt to map the distance from the applicant's stated home address to his stated employment at ██████████ at www.mapquest.com which indicates that there is no ██████████ in Jersey City, NJ; the address in Jersey City that is nearest in spelling to the applicant's claimed address is ██████████ (accessed November 9, 2009).
4. The ██████████ employment letter dated March 26, 1990 which indicates that the applicant was employed at this pharmacy from June 10, 1980 through the date that letter was signed. While the letterhead indicates that this pharmacy is located in New York City, the telephone numbers in the letterhead

do not include an area code to inform individuals which is the relevant area code in New York City to use. Also, the letter includes only an illegible signature beneath which is typed: [REDACTED] instead of listing below the signature the name and title of the individual who signed the letter such that this person might be contacted to verify the contents of the letter.

5. The Form I-687 on which the applicant stated at item 36 that he left his job at [REDACTED] on December 31, 1989, (at which time he moved to Chicago, Illinois according to item 33 of this form.)

The applicant stated on the Form I-687 that he resided at [REDACTED] from December 1980 through December 1989, at which time he moved to Chicago, Illinois. Yet, he also submitted the statement of [REDACTED] which claimed that the applicant lived at [REDACTED] from November 1986 through at least April 1990. Further, an Internet search for driving directions from the [REDACTED] address to the address which the applicant presented as his employment address during the relevant period indicates that there is no such address as [REDACTED]. Also, the employment letter which the applicant submitted from [REDACTED] does not appear to be authentic in that, for example, it is written on letterhead stationery that does not list which area code in New York City to use when telephoning this pharmacy and it indicates that the applicant was still working at this pharmacy on March 26, 1990 when the letter was written; yet, the applicant claimed to have left this position at [REDACTED] in December 1989 when he moved to Chicago.

These discrepancies cast doubt on the authenticity of all the evidence of record, including the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

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. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Such inconsistencies in the record may be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States throughout the statutory period. *See id.*

In the AAO's notice of intent to dismiss, the AAO notified the applicant that this office finds that the various statements and affidavits currently in the record which attempt to substantiate his residence and employment in the United States throughout the statutory period are not sufficient to overcome the inconsistencies in the record regarding his claim that he maintained continuous residence in the United States throughout the statutory period. These affidavits and statements also lack detail relating to his claim of continuous residence in that, for example, they fail to list his specific address in the United States during the statutory period.

The AAO stated in the notice of intent to dismiss that the applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and

through May 4, 1988. That notice provided the applicant the opportunity to provide independent, objective evidence from credible sources which address and rebut the discrepancies described above.

The applicant did not respond to the notice of intent to dismiss. Thus, the applicant has not established continuous residence in the United States throughout the statutory period. The appeal must be dismissed on this basis.

The notice of intent to dismiss also stated that the record indicates that the applicant was arrested by the Mineola County Police on or about September 5, 1995 at which time he used the alias: [REDACTED] and the false date of birth: April 15, 1963. The record indicates that this arrest led to the applicant being charged with driving while intoxicated and resulted in his being convicted of operating a motor vehicle while impaired by alcohol. However, the A-file does not include a copy of the final court disposition issued in this matter. Thus, the AAO requested a certified copy of the final court disposition relating to the charges filed against the applicant on September 5, 1995, under [REDACTED]. The notice of intent to dismiss also explained the steps that the applicant should take if he was not able to obtain a certified copy of the final court disposition relating to these criminal charges, or any other criminal charges that have been filed against him, in or outside the United States, if there are any other charges. The applicant did not reply to the notice of intent to dismiss within the period of time allotted.

According to the regulation set forth at 8 C.F.R. § 103.2(a)(13)(i), whenever an applicant does not submit requested material necessary for the processing and approval of a case by the required date, the matter may be summarily dismissed as abandoned.

The applicant has not submitted requested documentation necessary for the processing and approval of this case, needed to establish that the charge brought against him during September 1995 did not lead to a conviction that renders him ineligible for the benefit sought in this matter. The AAO will also dismiss this appeal based on the applicant's failure to provide the requested documents.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. The applicant has not submitted requested documentation necessary for the processing and approval of this case. The applicant is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act for these reasons, with each considered as an independent and alternative basis for denial.

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