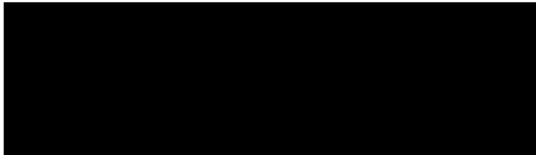


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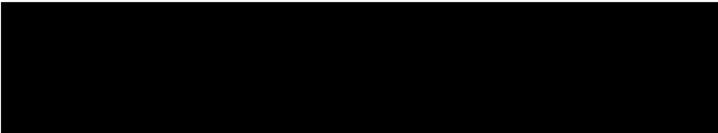
Office: CHICAGO

Date: JUL 26 2007

IN RE: Applicant: [Redacted]

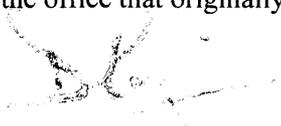
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The district 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 argues the director has failed to provide a logical explanation why pay stubs are not primary evidence. Counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides copies of additional documents along with previously submitted documents in support of the appeal.

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. 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).

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).

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

- Several envelopes postmarked in October and December 1981, May 1982, July 1983 and June 1984, and addressed to applicant's Chicago residence at [REDACTED]
- An affidavit notarized July 21, 1990, from [REDACTED] of Chicago, Illinois, who indicated he has been acquainted with the applicant since 1986 and attested to the applicant's departure from the United States from June 21, 1987 through July 28, 1987. The affiant asserted that he sent medicine for his father with the applicant at the time of his 1987 departure.
- An additional affidavit notarized July 17, 1996 from [REDACTED], who attested to the applicant's Chicago residences at [REDACTED] from August 1981 to August 1987 and at [REDACTED] from August 1987 to May 1988. The affiant based his knowledge on having played soccer every weekend and having a party every month with the applicant.
- A letter dated July 23, 2004, from [REDACTED] president of Bangladesh Association of Chicagoland (BAC), in Chicago, Illinois, who indicated that the applicant has been an active member of BAC since November 1981. [REDACTED] indicated that the applicant participated on a regular basis and contributes to many activities such as cultural and children programs and social services.
- A 1988 wage and tax statement from Sheraton Plaza in Chicago, Illinois, which listed the applicant's Chicago address at [REDACTED]. The applicant's wages for 1988 were \$444.17.
- A social security printout, which reflected the applicant's earnings since 1988 in the amount of \$2,271.00.¹
- A notarized affidavit submitted on appeal from [REDACTED] of Chicago, Illinois, who attested to the applicant's Chicago residences at [REDACTED], from August 1981 to August 1987 and at [REDACTED] from August 1987 to May 1988. The affiant asserted that he met the applicant several times in Chicago since 1981.
- A notarized affidavit submitted on appeal from [REDACTED] of Chicago, Illinois, who indicated that he has been acquainted with the applicant in the United States since 1981. The affiant asserted that the applicant was a regular customer at his restaurant, Star of India, in Chicago.

On appeal, the applicant asserts that at the time of his interview he submitted all the evidence he had in his possession. The applicant asserts:

That I was without any identification card, or social security number, and was not able to open any bank account or sign any lease in my name and I was able survive to work for people in exchange of room and board. Without any legal papers in the United States my only recognition was with my own countrymen.

Pursuant to *Matter of E--M--*, *supra*, affidavits in certain cases can effectively meet the preponderance of evidence standard, and the director cannot simply refuse to consider such evidence merely because it is unaccompanied by other forms of documents.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The applicant provided affidavits from individuals, all whom provide their current addresses and/or telephone numbers and indicate a willingness to testify in this matter. The district director has not established that the information in these

¹ The applicant's earnings relate to his employment subsequent to May 4, 1988.

affidavits was inconsistent with the claims made on the application, or that such information was false. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.