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**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED]  
MSC 02 126 60965

Office: NEW YORK

Date: **SEP 07 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:

[REDACTED]

**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. 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.

  
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, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant provides additional documentation 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. Section 1104(c)(2)(B) of the LIFE Act; 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 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.

Although Citizenship and Immigration Services (CIS) 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 applicant stated on an affidavit to determine class membership, which he signed under penalty of perjury on January 22, 1991, that he first arrived in the United States on November 25, 1980 pursuant to a B-2 nonimmigrant visitor's visa through John F. Kennedy Airport in New York. The applicant stated that he overstayed his visa, but left for Bangladesh on October 25, 1983 and returned on November 30, 1983. On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on October 18, 1990, the applicant stated that he lived at [REDACTED] in Queens, New York

from December 1980 until October 1987 and at [REDACTED] in Brooklyn from November 1987 to March 1990. The applicant stated that he worked at Nostrand News Agent in Brooklyn from February 1981 to August 1987 and at Kingfisher Cafe in Bronx, New York from September 1987 to March 1990.

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

1. A January 11, 1991 affidavit from [REDACTED], in which he stated that he and the applicant are from the same country and that they try to get together "every now & then." The affiant stated that the applicant lived at [REDACTED] Queens, New York from December 1980 to October 1987 and at [REDACTED] in Brooklyn from November 1987 to March 1990. Although the affiant stated that he knew the applicant from Bangladesh, he did not state when and how he renewed his acquaintance with the applicant in the United States or indicate the basis of his knowledge of the applicant's arrival in the United States.
2. A copy of a January 2, 1991 affidavit from [REDACTED] in which he stated that the applicant is his best friend, and that when he was in New York, he purchased his necessities from the affiant's grocery store and occasionally helped in the store. The affiant stated that the applicant lived in New York from December 1980 to March 1990.
3. A copy of a January 14, 1991 affidavit from [REDACTED], in which he stated that he owned property at [REDACTED] in Ozone Park, Queens, New York, and that the applicant lived as a tenant at that address from December 1980 to October 1987. However, the applicant stated on his Form I-687 application that he lived at [REDACTED] in Queens during this time. The applicant submitted no documentary evidence such as rent receipts, canceled checks, or money order receipts to corroborate his residency at either address. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).
4. A December 12, 1990 sworn statement from Nostrand News Agents, signed by [REDACTED] [REDACTED] It is unclear from the document whether the statement was signed by [REDACTED] as manager or for the manager of the organization. The letter indicated that the applicant worked "under the management" of the company from February 1981 to August 1987 and was paid in cash. The letter did not provide the applicant's address at the time of his employment with the company or whether the information concerning the applicant's employment was taken from company records as required by 8 C.F.R. § 245a.2(d)(3)(i). The applicant submitted no documentation to corroborate his employment with Nostrand News Agents. The district office was unable to verify the applicant's employment with Nostrand News Agents, as there was no valid telephone number, the address on the letterhead did not correspond to the company, and the current occupants at the address did not know the applicant.
5. A copy of an October 27, 1999 notarized statement from [REDACTED] in which he stated that he had known the applicant since 1985. [REDACTED] did not state how and under what circumstances he became acquainted with the applicant or that the applicant resided in the United States during the period of their acquaintance.

6. A copy of an October 1, 1999 notarized statement from [REDACTED] in which he stated that he had known the applicant since 1985. [REDACTED] did not state how and under what circumstances he became acquainted with the applicant or that the applicant resided in the United States during the period of their acquaintance.
7. A copy of a September 28, 1999 notarized statement from [REDACTED], in which he stated that he had known the applicant since 1986. [REDACTED] did not state how and under what circumstances he became acquainted with the applicant or that the applicant resided in the United States during the period of their acquaintance.
8. A November 21, 1990 letter from Heatmasters Realty Corporation signed by [REDACTED] who identified himself as the managing agent. [REDACTED] stated that the applicant lived at [REDACTED], Brooklyn from November 1987 to March 1990.

The applicant stated that he arrived in the United States pursuant to a B-2 nonimmigrant visa in 1980 and again in November 1983. However, he submitted no documentary evidence to corroborate these entrances.

The district office was unable to verify the applicant's employment with either of the companies that he identified on his Form I-687 application. As discussed previously, the district office was unable to contact Nostrand News Agents, as it had no valid telephone number. Additionally, the address on the letterhead did not correspond to the company and the current occupants at the address did not know the applicant. The district office encountered the same situation when it attempted to verify the applicant's employment with Kingfisher Cafe. The applicant submitted no additional information regarding his employment and did not address this issue either in response to the director's Notice of Intent to Deny or on appeal.

While affidavits in certain cases can effectively meet the preponderance of evidence standard, the information in the affidavits and statements submitted by the applicant are either vague, providing no details to date the applicant's arrival and residency in the United States, or inconsistent with the applicant's claims on his application. Accordingly, the applicant has failed to establish by a preponderance of the evidence that he resided continuously in the United States during the requisite period.

The record reflects that the applicant filed a Form I-687, Application for Status as a Temporary Resident, on January 1, 2006, which was denied by the district director on September 9, 2006. The applicant's appeal of that decision is not at issue in this decision.

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