

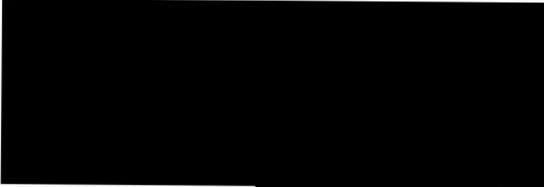
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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FILE: [REDACTED]
MSC 03 205 60324

Office: NEW YORK

Date: APR 02 2008

IN RE: Applicant: [REDACTED]

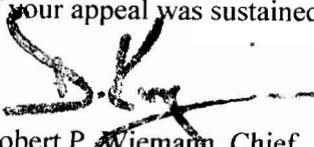
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or 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 remanded for further action, you will be contacted.


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

The district 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 submitted additional evidence to rebut the director's findings. The applicant submitted a certified statement from a doctor who treated the applicant's father for hypertension to explain that the length of the applicant's stay in Bangladesh from October 22, 1987 to December 27, 1987 was unanticipated. Counsel also asserted that the applicant's statement on his Form G-325A, Biographic Information, was a clerical error.

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.

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.” The applicant has not submitted any evidence to establish that an emergent reason delayed her return to the United States.

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 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 the Notice of Intent to Deny (NOID), dated on March 30, 2006, the director stated that the applicant submitted several affidavits with no point of contact for verification, that the applicant had stated under oath that he had traveled to Bangladesh October 22, 1987 to December 27, 1987 to visit family, and that the applicant had previously stated on his Form G-325A that he had resided in Bangladesh from December 1958 through 1987. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no additional evidence was received. In the Notice of Decision, dated May 2, 2006, the director denied the instant applicant based on the reasons stated in the NOID.

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. Here, the applicant has failed to meet this burden.

In support of the applicant’s claim, the record contains the following relevant evidence:

1. An undated affidavit by [REDACTED] who certified that he has known the applicant since 1981. He stated that he met the applicant in Brooklyn, New York. Mr. [REDACTED] provided his address of residence. Although not required, the affidavit failed to include any supporting documentation of the affiant’s presence in the United States. The affiant failed to indicate the applicant’s place of residence during the requisite period. The affiant also failed to indicate how he dated his acquaintance with the applicant, how he met the applicant or how frequently he saw the applicant.
2. An affidavit by [REDACTED], who certified that the applicant lived with him at [REDACTED], in Brooklyn, New York, from November 1981 to December 1994 and shared

the household expenses, including the rent, electricity, gas, and other utility bills. [REDACTED] provided his address of residence. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States or documentation to support his assertion, such as a lease agreement, household bills, etc.

3. A December 21, 1992 affidavit by [REDACTED] who stated that he and the applicant lived in the same building in New York since 1981 and saw each other two to three times a week. [REDACTED] provided his address of residence and the applicant's address of residence. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States throughout the requisite period.
4. A September 17, 1988 statement by [REDACTED] vice-president of the Fat Chaw Merchants' Association, who stated that he has known the applicant since 1981. [REDACTED] provided the association's address and telephone number. The affiant failed to indicate the applicant's place of residence during the requisite period. The affiant also failed to indicate how he dated his acquaintance with the applicant, how he met the applicant or how frequently he saw the applicant.

The record also contains a Form for Determining Class Membership in *CSS v. Meese* wherein the applicant stated that he departed the United States on October 22, 1987 and returned to the United States on December 27, 1987. The applicant's absence from the United States exceeded the forty-five (45) days permitted under the regulation at 8 C.F.R. § 245a.15(c)(1).

On appeal, the applicant attempts to establish that due to emergent reasons, his return to the United States could not be accomplished within the time period allowed. The applicant asserts that he went to visit his family in Bangladesh and his father became ill during his visit. The applicant submitted a declaration by [REDACTED], a physician in Bangladesh, as proof that his extended stay in Bangladesh in 1987 was unexpected. [REDACTED] stated that he treated [REDACTED], the applicant's father, for hypertension. [REDACTED] stated that the length of treatment was from December 2, 1987, to December 20, 1987. The AAO finds that the applicant's evidence would tend to establish that an emergent reason delayed his return to the United States.

Although the applicant has submitted several affidavits in support of his application, the applicant has not provided sufficient contemporaneous evidence of residence in the United States during the duration of 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, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.

In addition, the applicant has not resolved all of the discrepancies noted in the NOID. The record contains the applicant's Form G-325A, wherein the applicant stated that he resided in [REDACTED]

Serajonj, Bangladesh from December 1958 to 1987. On appeal, counsel asserted that the applicant's statement was a clerical error. 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). The record contains no independent objective evidence to explain the above discrepancy.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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