



U.S. Citizenship  
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FILE:

MSC 02 143 63391

Office: NEW YORK

Date: **AUG 04 2008**

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 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.

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 (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 asserts that the applicant submitted his “entire original documents to the service” and testified under oath that the documents submitted were bona fide and credible. Counsel requests that the denial be reconsidered because he claims that the director erred in not giving sufficient weight to the documents submitted.

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.

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).

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.

In the Notice of Intent to Deny (NOID), dated September 14, 2006, the director stated that the applicant failed to submit sufficient credible evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that at the time of his interview, the applicant indicated that he resided at [REDACTED], New York, New York from 1981 to 1985 with [REDACTED]. However, the applicant claimed on his Form I-687 application to have resided at [REDACTED] during the same period of time. The director also noted that the applicant submitted questionable documents, including unverifiable employment letters from: The Lord India Restaurant, signed by [REDACTED], Zum Zum Construction, signed by [REDACTED] and, Sunprime Services, signed by [REDACTED] and two unverifiable affidavits from [REDACTED] attesting to being the applicant's roommate from September 1985 to November 1988. The director determined that the evidence submitted lacked credibility and probative value. The director granted the applicant thirty (30) days to submit additional evidence.

The record reflects that the applicant's response to the NOID consisted of a letter from the applicant stating that due to the over two decades of time, he was unable to recall the exact dates where he had resided in Manhattan and in Rego Park. No additional evidence was received. In the Notice of Decision, dated October 17, 2006, the director denied the instant application 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. The applicant submitted letters of employment, affidavits, and other documents as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

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

Employment Letters

The applicant submitted three letters of employment:

1. A notarized letter from [REDACTED] of The Lord India Restaurant in New York, New York, who indicated that the applicant was in his employ as a runner from October 1985 to December 1988. Mr. [REDACTED] also attests to the applicant's absence during July 1987 to August 1987 to visit his ailing mother in Bangladesh;
2. A notarized letter from [REDACTED], proprietor of Zum Zum Construction Co., Inc. in Brooklyn, New York, who indicated that the applicant was in his employ as a field worker from November 1981 to April 1983; and,
3. A notarized letter from [REDACTED], proprietor of Halal Catering Meat Market in Brooklyn, New York, who indicated that the applicant was in his employ as a meat cutter from May 1983 to September 1985.

It is noted however, that the letters of employment failed to provide the applicant's address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

Affidavits:

The applicant submitted the following affidavits and evidence:

4. A letter dated August 30, 1991, from the applicant's former counsel, who attested to the applicant's departure on July 18, 1987, from J.F.K Airport in New York to Bangladesh;
5. An airline ticket from Pan Am Airlines issued on July 15, 1987 for departure on July 18<sup>th</sup> from J.F.K. Airport;
6. A notarized letter from [REDACTED] Chief Executive Director of Islamic Council of America, Inc., in New York, New York, stating that the applicant met him almost every day from 1981 to 1988 at Muslim celebrations while he lived in the neighborhood. The affiant also attests to the applicant's residence during this period at [REDACTED], New York, New York;
7. A notarized affidavit from [REDACTED] of New York, New York, who indicated that the applicant resided with him at [REDACTED], New

York, from November 1981 to August 1985. The affiant states that the applicant shared all common expenses, but the lease agreement and utilities were in his name;

8. A notarized affidavit from [REDACTED] of Astoria, New York, who indicated that he has been acquainted with the applicant since 1986. The affiant states that he met the applicant regularly at the applicant's former place of employment, The Lord India Restaurant, and has remained close friends with the applicant since that time;
9. A notarized affidavit from [REDACTED] of Rego Park, New York, who indicated that the applicant resided with him at [REDACTED] Rego Park, New York from September 1985 to November 1988. The affiant states that the applicant shared all common expenses, but the lease agreement and utilities were in his name;
10. A notarized affidavit from [REDACTED] of Astoria, New York, and [REDACTED] of Jamaica New York, who indicates that they were former roommates with the applicant at [REDACTED] Rego Park, New York, and attests to the applicant's July 1987 to August 1987 absence from the United States in order to visit his ailing mother; and
11. Affidavits from acquaintances, [REDACTED] of East Meadow, New York, [REDACTED] of Jamaica, New York and [REDACTED] of Flushing, New York, who attest to the applicant's residences in New York during 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. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant, except to say generally they met the applicant at Muslim activities. 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. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 from prior to January 1, 1982, through May 4, 1988.

The applicant has failed to provide any reliable documentation of his claimed entry into the United States prior to January 1, 1982. This casts doubt on whether the applicant's claim that he first entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. 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. It is incumbent upon the applicant to

resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status 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.