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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date:

JUL 03 2008

MSC 02 243 60896

IN RE: Applicant:

[Redacted]

APPLICATION:

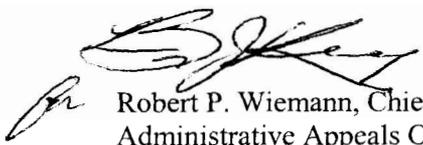
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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 (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 director erred in not giving more weight to letters and biographic information presented by the applicant.

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 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 submitted evidence is not relevant, probative, and credible.

In an attempt to establish continuous unlawful residence in the United States during the requisite period in this country since prior to January 1, 1982, the applicant provided seven affidavits:

1. An affidavit from [REDACTED], dated January 15, 2001. Mr. [REDACTED] states that he has known the applicant since 1980, and that he accompanied the applicant to an INS Legalization office 24th Street in New York to file an application for amnesty. However, the application was not accepted;
2. An affidavit from [REDACTED] dated May 8, 2002. Mr. [REDACTED] states that he has known the applicant since 1980, and that the applicant is his friend who resides at [REDACTED], Woodside, NY 11377;
3. An affidavit from [REDACTED], D.D.S, dated October 7, 2003. Dr. [REDACTED] states that he has known the applicant since 1983, when the applicant visited his office for dental care;
4. An affidavit from [REDACTED] Staff Supervisor of Metro Access, Inc., dated October 10, 2003. Mr. [REDACTED] states that he has known the applicant since November 1981, and that the applicant is a client of Metro Access, Inc., is a technical expert in the television field, is his friend, and resides at [REDACTED], Woodside, NY 11377;
5. An affidavit from [REDACTED], President, Bangladesh League of America, Inc., dated April 4, 2003. Mr. [REDACTED] states that the applicant has been an active member of the Bangladesh League of America, Inc. since 1981;
6. Two form affidavits from [REDACTED], both dated April 3, 1990. Mr. [REDACTED] states in one of the affidavits, that the applicant had been his tenant, at [REDACTED] Lake Worth, Florida, since March 1, 1990. In his second affidavit, [REDACTED] states that he has known the applicant since November 1981, and that he picked up the applicant at the Miami International Airport during the last week of November 1982, when the applicant last came from Bangladesh, and that he stayed with him for a considerable length of time; and,
7. An affidavit from [REDACTED], dated January 25, 2001. Mr. [REDACTED] states that he has known the applicant since 1982, and that the applicant resides at [REDACTED].

Woodside, NY 11377; Mr. [REDACTED] also states that he accompanied the applicant to an INS Legalization office on 24th Street in New York to file an application for amnesty. However, the application was not accepted because of the applicant's brief absence.

Although the applicant has submitted these affidavits in support of his application, the applicant has not provided any 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.

[REDACTED] states that he has known the applicant since 1980, and [REDACTED] states that he has known the applicant since 1982, and both affiants state that they accompanied the applicant to an INS Legalization office in New York to file an application for amnesty. However, neither affiant indicates how they acquired personal knowledge of the applicant, or how frequently they saw the applicant, or when they accompanied the applicant to the New York INS office to file an application for amnesty. [REDACTED] states that he has known the applicant since 1980, [REDACTED] states that he has known the applicant since November 1981, and [REDACTED] states that he has known the applicant since November 1981, but none of them indicated how they dated their acquaintance with the applicant. [REDACTED] states that the applicant has been an active member of the Bangladesh League of America, Inc. since 1981, but does not provide any information about the applicant's "active" membership, or how frequently he saw the applicant.

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.

It is noted that the applicant provided documents which do not, individually or cumulatively, establish his residence in the United States during the duration of the requisite period. Specifically, the applicant submitted:

- The affidavit of [REDACTED], D.D.S, dated October 7, 2003. [REDACTED] states that he treated the applicant in September 1983, and again in June 1987, and that he sees the applicant at different occasions at various community events. There is no indication that the affiant knew the applicant before January 1, 1982. Furthermore, the affiant does not state whether the applicant has been a continuous resident of the United States since that time.
- Photocopies of 5 envelopes addressed to the applicant in the United States. Two of the envelopes are date-stamped in 1983, and in 1986. The post-marks on the remaining 3 envelopes are unclear. These envelopes do not establish that the applicant has been a continuous resident of the United States since before January 1, 1982.

Although the applicant has submitted these documents in support of his application, they do not establish the applicant's residence from period beginning prior to January 1, 1982, and the applicant has not provided any additional contemporaneous evidence of residence in the United States during the duration of the requisite period. Given that none of these documents relate to the period from before January 1, 1982, the evidence as a whole does not establish the applicant's continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

In the Notice of Intent to Deny (NOID), dated January 20, 2005, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director also noted that the applicant failed to provide details of he claimed travel to the United States, including his claimed departure in 1982, and his return to the United States, via Miami International Airport, also in 1982.

The record does not reflect that the applicant responded to the NOID. However, on appeal, counsel asserts that the applicant's prior counsel submitted a response, and provided a copy of that response. In the response brief, prior counsel states that the director erred in including information that does not pertain to the applicant in the NOID. It is noted that the prior counsel's response brief was also accompanied by an affidavit by the applicant stating that some of the answers that the interviewing officer states that the applicant gave in response to the officer's questions at the interview on October 16, 2003, are incorrect. On appeal, however, despite the issues raised by the director in the NOID and in the denial notice, the applicant has also failed to provide details of his claimed travel to and from the United States, including his departure in 1982, and his return to the United States, via Miami International Airport, also in 1982.

The AAO also finds that the applicant failed to submit sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. As noted above although the applicant claims that he first entered the United States in October 1981, and that he made a brief trip outside of the United States from October 25, 1982 and returned at Miami International Airport on November 27, 1982, as a non-immigrant visitor, the applicant failed to provide reliable supportive documentation, such as evidence of a visa or an I-94 arrival/departure card, or relevant passport stamp, or any other travel documentation. It is reasonable to expect that the applicant would be able to provide documentation to confirm his claimed travel from and re-entry into the United States. However, as the director pointed out, no such documentation was provided. It is also noted that the applicant stated in his Affidavit for Determination of Class Membership in League of United Latin American V. INS (LULAC), sworn to on April 3, 1990, that he first entered the United States illegally by boat in October 1981, then he departed the United States for Bangladesh on October 25, 1982, and returned from Bangladesh and arrived at Miami International Airport in November 1982, with a visa. It is noted, however, that in order to receive such a visa, the applicant had to convince a U.S. consular official that he resided and worked outside of the United States. Therefore, the applicant cannot establish that he resided in the United States in an unlawful status since 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. 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 AAO finds that 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.