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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

MSC 02 243 61337

Office: NEW YORK

Date:

JUN 30 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:

[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 states that the director erred in not considering all of the evidence and the applicant's testimony presented. Counsel submits a previously provided affidavit on appeal. Counsel further states that the director erred in not allowing the applicant additional time to respond to the director's notice of intent to deny.

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 October 18, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant acknowledged at his interview that three affiants ([REDACTED], and [REDACTED]) who provided affidavits attesting to the applicant's residence during the requisite period, could not be contacted. Therefore, as these affidavits were unverifiable, they lacked probative value. The director also questioned whether the applicant had entered the United States in March 1981 as claimed because the applicant's wife gave birth to a child on January 1, 1982 in Bangladesh. In addition, the director noted that the applicant's trip to Canada to visit a friend and seek employment could not be considered brief, casual, and innocent, and therefore, broke his physical presence during the requisite period. 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's counsel contending that the applicant's multiple purpose visit to Canada was brief, casual, and innocent, and therefore, did not break his continuous residence. Also, pertaining to the birth of the applicant's child in Bangladesh on January 1, 1982, counsel submits a letter from Dr. [REDACTED], stating that he approximates that the applicant's wife conceived on March 25th 1981. No additional evidence was received. In the Notice of Decision, dated November 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 his continuous residence in the United States in an unlawful status, and his physical presence, during the requisite period. The applicant submitted a letter of employment and affidavits as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letters

The applicant submitted a letter of employment, dated October 27, 1990, from [REDACTED] Manager/Owner of Everest Indian Restaurant, located at 85 1st Avenue, New York, New York. Mr. [REDACTED] states that the applicant had been employed as a busperson from April 1981 to June 1985. It is noted however, that the letter 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).

The applicant also submitted a letter of employment from [REDACTED], stating that the applicant had been employed as a painter in construction work from February 1986 until March 1990. Mr. [REDACTED], however, 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 a sworn form affidavit from [REDACTED], dated May 28, 2002. Mr. [REDACTED] attests that the applicant resided with him at [REDACTED], Bronx, New York 10462. However, the affiant does not indicate how he dated his acquaintance with the applicant, and does not state whether the applicant has been a continuous resident of the United States since that time.

The applicant also submitted a sworn affidavit from [REDACTED] sworn to on October 29, 1990, stating that the applicant arrived in the United States, via the Bahamas, in March 1981, and stayed with him for about a month. Mr. [REDACTED] also states that the applicant traveled with him to Canada on June 25th 1987 and returned by car with him to the United States on July 28, 1987. Mr. [REDACTED]'s affidavit indicates the applicant's visit to Canada was brief, casual, and innocent. However, he does not indicate how frequently he saw the applicant in the United States, or whether the applicant has been a continuous resident of the United States since prior to January 1, 1982.

Although the applicant has submitted two employment letters and two 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. 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. 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 the requisite continuous residence in an unlawful status in the United States.

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.