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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 03 226 60495

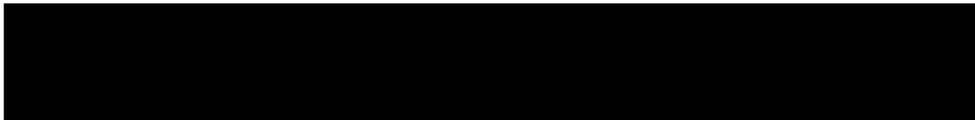
Office: NEW YORK

Date: **MAR 19 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. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status since that date through May 4, 1988.

On appeal, applicant asserts that he has resided in the United States since 1981. He also attempts to resolve any discrepancies noted by the director.

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.* at 80. 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, 431 (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)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In the Notice of Intent to Deny (NOID), dated October 5, 2005, the director stated that the applicant failed to submit any credible documentary evidence establishing his claimed entry into the United States before January 1, 1982, and continuous unlawful presence during the requisite period. The director stated that the applicant only submitted affidavits, some of which appeared to be fraudulent. The director noted several discrepancies in the affidavits. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence. The applicant submitted additional evidence in rebuttal to the NOID.

In the Notice of Decision (NOD), dated February 7, 2006, the director determined that applicant's affidavits failed to overcome the reasons for denial stated in the NOID. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

The record contains the following evidence in support of the applicant's claim.

1. An April 16, 2005, sworn affidavit by [REDACTED], who certified that he met the applicant in September 1981. The affiant stated that they worked together in [REDACTED] in New York. The affiant stated that the applicant worked as a deliveryman. Although the affiant did not meet the applicant until September 1981, the affiant certified that the applicant entered the United States in June 1981 and has been continuously physically present in the United States in an unlawful status

except for a short absence. The affiant provided his telephone number, address of residence, and other identifying information.

The affiant also provided an October 19, 2005, sworn affidavit in an attempt to resolve any discrepancies. The affiant stated that he first came to the United States with a C-1 visa in December 1980 through Elizabeth, New Jersey. He stated that he was picked up by INS agents in April 1982 and brought into proceedings. He further stated that in June 1984, he married [REDACTED] and eventually obtained lawful permanent resident status. The affiant reiterated that he met the applicant in September 1981. He further stated that he executed an affidavit on April 16, 2005, stating his familiarity with the applicant and the applicant's physical presence in the United States since June 1981. The affiant provided his United States passport number, a copy of his marriage certificate, and address of residence.

2. An April 18, 2005, notarized affidavit by [REDACTED] who certified that he has known the applicant since April 1985. The affiant stated that they worked together at the [REDACTED] at [REDACTED], Miami, Florida, from April 1985 to June 1986. Although the affiant did not meet the applicant until April 1985, the affiant certified that the applicant entered the United States in June 1981 and has been continuously physically present in the United States in an unlawful status except for a short absence. The affiant provided his telephone number, address of residence, and other identifying information.
3. An April 18, 2005, notarized affidavit by [REDACTED], who certified that she has known the applicant since January 1987. The affiant stated that she knew him when he worked in a gift shop in Queens, New York, where he worked as store helper. Although the affiant did not meet the applicant until January 1987, the affiant certified that the applicant entered the United States in June 1981 and has been continuously physically present in the United States in an unlawful status except for a short absence. The affiant provided her telephone number, address of residence, and other identifying information.

All of the above affiants have sworn or certified that they the applicant entered the United States in June 1981, but all of the affiants stated that they did not meet the applicant until months or years later. [REDACTED] stated he met the applicant in September 1981, two months later. [REDACTED] stated he had known the applicant since April 1985, over three years later. [REDACTED] stated that she has known the applicant since January 1987, over five years later. The affidavits are inconsistent and lack credibility. Based on their own statements, the affiants do not have direct, personal knowledge of the applicant's date of entry into the United States. The broad assertions of the affiants detract from the credibility of their affidavits in support of the applicant's claim.

The record also contains the following evidence in support of the applicant's claim:

4. Five envelopes addressed to the applicant in the United States. Two of the five envelopes contain postmarks date-stamped in 1983. The remaining envelopes are illegible. Two envelopes in 1983 are not credible evidence that the applicant entered the United States before January 1, 1982, and continuously resided in the United States for the duration of the requisite period.
5. A May 8, 2003, sworn affidavit by [REDACTED] who stated that the applicant was his roommate from September 1981 to March 1985. The affiant stated that the applicant lived with him at [REDACTED], Brooklyn, New York from June 1981 to December 1983. There is a two month discrepancy in the affiant's statement. The affiant also stated that the applicant lived with him at [REDACTED] Elmhurst, New York, from January 1984 to March 1985. The affiant stated that all the apartment leases and utility bills were under his name and the applicant paid his share of the bills. The affiant also stated that the applicant worked in different Indian restaurants and gas stations in New York City during the time they lived together. The affiant further stated that the applicant left for Miami, Florida, in April 1985 for better employment. The affidavit contained the affiant's address and U.S. citizenship certificate.

The affiant also provided a sworn affidavit, dated October 21, 2005. The affiant stated that his prior affidavit was true. He did not resolve the two month discrepancy regarding the first address of residence. The affiant confirmed that he met the applicant in 1981. The affiant also stated that he took the applicant to a private clinic a couple of times at the end of 1981 located at [REDACTED] in Bayside, New York. He further stated that the applicant obtained a medical note from [REDACTED] in May 1990 stating his treatment at this clinic. The affiant provided his address of residence and naturalization certificate number.

6. An April 15, 2005, letter by [REDACTED], General Secretary of the [REDACTED], who stated that he has known the applicant since 1984. The affiant stated that the applicant prayed regularly in the Madina Masjid. The affiant further stated that he used to meet the applicant while he prayed in the Madina Masjid. The affiant provided his telephone number and the address of the organization. The affiant also provided the current address of the applicant. It is noted that the applicant did not indicate membership in this organization in his Form I-687, Application for Status as a Temporary Resident, signed by the applicant on May 29, 1990. In the Form I-687, at Question #34, the applicant is asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc.

It is also noted that the affiant failed to show inclusive dates of membership, state the address where the applicant resided during membership period, and establish the origin of the information being attested to as required by the regulation at 8 C.F.R. § 245a.2(d)(3)(v).

7. A March 28, 2005, declaration by [REDACTED], General Secretary of Bangladesh Society Inc., New York, who stated that the applicant has been a long standing member of the organization. [REDACTED] stated that the applicant entered the United States before January 1, 1982, and has been residing continuously in an unlawful manner except for a short absence. The letter contained the telephone number and address of the organization. It is noted that the affidavit does not meet the requirements of 8 C.F.R. § 245a.2(d)(3)(v).
8. A copy of a May 21, 1990, notarized letter by [REDACTED] general manager of AMOCO, who stated that the applicant worked at AMOCO Gas & Service Unit between July 1986 and December 1989 as a cashier. The letter contained the address and telephone number of the company. [REDACTED] 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 by the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The absence of sufficient detailed information detracts from the credibility of the affiant.
9. A copy of a May 16, 1990, notarized letter by [REDACTED], who stated that the applicant was under his treatment for allergy caused by a cold between December 19 and December 30, 1981. [REDACTED] stated that this information was based on the patient's file records in the affiant's office. The letter contained the his telephone number and address. The record indicates that [REDACTED] did not receive his degree until June 29, 1984, and did not receive his license until July 1, 1987. On appeal, the applicant attempts to explain this discrepancy. The applicant states that he does not remember the clinic or the doctor who treated him because he was sick at the time. The applicant asserts that the clinic found evidence of his treatment and provided the above letter.
10. An undated declaration by [REDACTED], president and convener of FOBANA, who certified that the applicant has played a great role in the creation of the organization since January 1985. [REDACTED] stated that the organization was formed in 1987. He also stated that the applicant was elected a Member-Secretary of FOBANA in 1988, and received an honorary award for Most Valued Member in 1989. The letter contained the address of the organization. The letter failed to show inclusive dates of membership, state the address where the applicant resided during membership period, and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The absence of sufficient detailed information detracts from the credibility of the declarant.
11. A May 8, 2003, sworn affidavit by [REDACTED] who stated that the applicant resided at [REDACTED], Woodside, New York from July 1986 until [REDACTED].

May 1989. The affidavit indicated that the applicant was an ex-roommate and co-worker. The affiant provided his address of residence.

Although the applicant has submitted numerous affidavits in support of his application, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The applicant has not provided sufficient credible, contemporaneous evidence of residence in the United States during the duration of the requisite period. The record contains numerous discrepancies in six of the ten affidavits. 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 inconsistencies. The above inconsistencies cast doubt on the credibility of the affiants. In addition, the affidavits by [REDACTED] and [REDACTED] lack the information required by the regulations. 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.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 discrepancies or minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from 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.