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U.S. Citizenship
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[REDACTED]

FILE:

MSC 02 232 66866

Office: NEW YORK

Date: **MAY 14 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. 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.

for 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 (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the evidence of record establishes the applicant's eligibility for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

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 its amenability to verification. See 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.

The applicant, a native of Bangladesh who claims to have lived in the United States continuously since July 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 20, 2002. At that time the evidence of the applicant’s residence in the United States during the 1980s consisted of a series of affidavits and letters he submitted between 1990 and 2001 in connection with two earlier applications for temporary resident status (in 1991 and 2001) under section 245A of the Immigration and Nationality Act. They included the following:

In 1990-91:

- Two affidavits from [REDACTED] a resident of Brooklyn, New York, dated December 11, 1990, stating that the applicant lived with him at two addresses in Brooklyn – [REDACTED] from July 1982 to December 1984, and [REDACTED] from January 1985 to November 1988.
- An affidavit from [REDACTED], a resident of Orlando, Florida, dated July 2, 1991, stating that the applicant had been his tenant at [REDACTED] in Orlando from December 1988 to the present (1991).

An affidavit from [REDACTED], a resident of Brooklyn, New York, dated March 15, 1991, stating that she met the applicant in [REDACTED] Skylite Gardens Restaurant, where he was working as a busboy, in October 1981, and that they spent time together over the years on weekends, dating and shopping, "till the end of December 1988."

- An affidavit from [REDACTED] a resident of Brooklyn, dated February 19, 1991, stating that he was the owner of Unique General Contracting Company in Brooklyn and that the applicant worked for the company as a "helper" from June 1984 to June 1987.
- An affidavit from [REDACTED] a resident of Brooklyn, dated June 10, 1991, stating that he was the president of the U.P. Construction Company in Brooklyn and that the applicant worked for the company as a "helper" from July 1987 to November 1988.

In 1999:

- An affidavit from [REDACTED] a resident of Brooklyn, New York, dated December 2, 1999, stating that she met the applicant in the United States in September 1981, had "kept in touch since that time," and that the applicant had helped care for his disabled son.
- An affidavit from [REDACTED] a resident of Brooklyn, dated August 9, 1999, stating that she met the applicant in May 1982 when he was employed as a busboy at [REDACTED] Skylite Garden Restaurant in New York City.
- An affidavit from [REDACTED] a resident of Brooklyn, dated July 28, 1999, stating that he had known the applicant since May 1985 and that he met the applicant at JFK Airport on October 3, 1986 upon the applicant's return from a trip to Bangladesh.

Another affidavit from [REDACTED], dated December 7, 1999, stating that he accompanied the applicant to an Immigration and Naturalization Service (INS) office in Manhattan to file his legalization application in October 1987, but that the application was "rejected at the counter" as the applicant "was told that he was not eligible to file for legalization."

- An affidavit from [REDACTED], a resident of Brooklyn, dated July 28, 1999, stating that she had known the applicant since 1986 and that he cleaned her home in August 1986.

- An affidavit from [REDACTED], a resident of Brooklyn, dated July 28, 1999, stating that she had known the applicant since November 1986, when he cleaned her house, and that he also painted her home in late May 1988.
- An affidavit from [REDACTED], a resident of Brooklyn, dated July 28, 1999, stating that he had known the applicant since January 1982 and reiterating the information provided in his earlier affidavits of December 1990 that the applicant lived with him at two different addresses in Brooklyn from July 1982 to December 1984 and from January 1985 to November 1988.
- An affidavit from [REDACTED], a resident of Brooklyn, dated July 27, 1999, stating that he had known the applicant since 1986 and that he was employed by the Congregation Beth Torah synagogue as a maintenance worker, cleaning the synagogue every two weeks or so, from 1986 to 1988.
- The foregoing affidavit was supplemented by a letter from [REDACTED] in his capacity as Treasurer of Congregation Beth Torah, dated November 16, 1999, stating that the applicant had provided custodial services to the synagogue such as cleaning, maintenance and light repairs on the average of once every two weeks from 1986 to 1988.
- An affidavit from [REDACTED] a resident of Brooklyn, dated November 26, 1999, reiterating the information provided in his earlier affidavit of June 1991 that the applicant worked for him at U.P. Construction Company “as a helper” from July 1987 to November 1988, and stating that the applicant told him in October 1987 that he had attempted to file an application for legalization at the INS office in New York City, but that it was rejected.

In 2001:

An affidavit from [REDACTED], a resident of Brooklyn, New York, dated May 9, 2001, stating that the applicant worked for him as a part-time gardener and maintenance man once or twice a month during August, September, and October 1981.

- An affidavit from [REDACTED] a resident of Brooklyn, dated May 10, 2001, stating that he met the applicant in October 1981 at a party for Bangladeshis and that since then the applicant had worked with him “on several occasion[s] . . . as a construction helper.”
- An affidavit from [REDACTED] a resident of Brooklyn, dated May 10, 2001, stating that he met the applicant in the fall of 1981 at a Friday “jumma prayer” at the mosque on 2nd Avenue in Lower Manhattan.

On February 7, 2006, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence. In response counsel took issue with the director's negative characterization of the evidence and resubmitted most of the affidavits and letters from 1990 to 2001.

On July 18, 2006, the director issued a Notice of Decision in which he denied the application on the ground that the evidence of record failed to establish the applicant's continuous residence in the United States in an unlawful status during the requisite time period for legalization under the LIFE Act.

On appeal, counsel reiterates his assertion that the previously submitted documentation dating from 1990 to 2001 establishes the applicant's eligibility for LIFE legalization, and contends that the director did not properly consider the evidence. Counsel submits two additional affidavits from [REDACTED], dated May 8, 2006, and [REDACTED], dated August 3, 2006, recounting the information each had provided in their previous affidavits prepared during the 1990s.

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 from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

There is no contemporary documentation from the 1980s that shows the applicant to have resided, or even been present, in the United States during the years 1981 to 1988. The earliest document in the record demonstrating the applicant's presence in the United States is a photocopy of his passport that was issued by Consulate General of Bangladesh in New York City on November 24, 1989. Counsel cites a naturalization interview notice sent to [REDACTED] at [REDACTED] in Brooklyn on July 31, 1985, but this document is evidence only of [REDACTED]'s residence at that address. It does not show that the applicant also resided there in 1985.

With respect to the employment letters and affidavits in the record – from the owner of Unique General Contracting Company, the president of U.P. Construction Company, and the treasurer of Congregation Beth Torah – none of them comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. Moreover, the affidavits from the two companies did not state the applicant's duties. Instead, they described him vaguely as a "helper" without any details about the nature of his work. In view of these omissions, and the fact that none of the affiants indicates that the applicant worked for his organization before 1984, 1986, or 1987, respectively, or claims to have known the applicant before then, the AAO concludes that

the employment letters and affidavits have little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The other affidavits in the record have minimalist or fill-in-the-blank formats with limited personal input by the affiants. For the amount of time they claim to have known the applicant, the affiants provide remarkably little information about him. Furthermore, only five of the affiants – one in 1991 (██████████), one in 1999 (██████████), and the three in 2001 (██████████, ██████████, and ██████████) – claim to have known the applicant before January 1, 1982. None of those five affiants indicated where the applicant was living in 1981, however, or in succeeding years. They described virtually nothing about the applicant's life in the United States, where he worked, and the nature and extent of their interaction with him over the years. While ██████████ claims to have met the applicant at ██████████ Skylite Gardens Restaurant in October 1981, she did not indicate how long he worked there or identify any subsequent employers, and did not describe much about her time with the applicant over the years except to say that they spent some weekends together dating and shopping until December 1988. While ██████████ claims to have met the applicant in September 1981, she provides no information about that episode, such as location and circumstances, and says nothing about her interaction with the applicant over the next 18 years except that they “kept in touch.” The same infirmities apply to the three affidavits from 2001. Each of the affiants claims to have met the applicant between August and October 1981, but none provides any information about the applicant over the following 20 years, and only one even states that they maintained contact during that time. Lastly, none of the five affiants discussed above, or any of the others with affidavits in the record, submitted any documentary evidence of their personal relationship with the applicant – such as photographs, letters, and the like – and none of them (except for ██████████, with his naturalization interview notice in 1985) submitted any documentation of their own identity and presence in the United States during the 1980s.

As previously indicated, evidence must be evaluated not only by its quantity, but also by its quality. For the reasons discussed above, the AAO concludes that the affidavits and letters in the record are too short on substance, and lack any support from primary documentation, to serve as persuasive evidence that the applicant resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.