

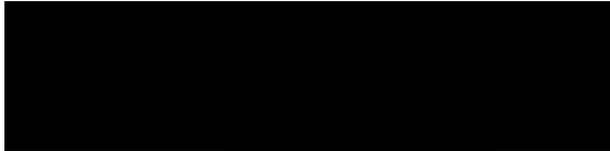
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: MSC 02 250 65421

Office: NEW YORK

Date: MAY 23 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 had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement.

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 states 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 petitioner 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 petitioner 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 or petition.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit. While affidavits “may” be accepted (as “other relevant documentation”) [See 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant’s claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant’s unlawful continuous residence during the requisite time period.

In connection with a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), submitted in or about September 1982, the applicant claimed to have initially entered the United States as a nonimmigrant visitor in June 1981, and to have overstayed his authorized period of admission. He claimed that he subsequently departed the United States on only one occasion – from May 1982 to June 1982, in order to attend his father’s funeral in Bangladesh, and to have again reentered the United States as a nonimmigrant visitor upon his return in June 1982. On his Form I-485, Application to Register Permanent Resident or Adjust Status, the applicant notes his last date of arrival in the United States as having been on an unspecified date in 1982.

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

- A receipt from East-West Appliances, Jackson Heights, New York (telephone number [REDACTED]), showing that the applicant bought a Sony Walkman for \$35.00. The date of purchase (April 2, 1982) and applicant’s name are handwritten on the receipt.
- A letter, dated February 17, 2003, from [REDACTED] General Secretary of Bangladesh Society, Inc., Elmhurst, New York, stating that the applicant was a member of the organization from 1982 to 1987.
- A letter, dated November 4, 2003, from Dr. [REDACTED], of Elmhurst, New York, stating that he has personally known the applicant since 1982.

In a Notice of Intent to Deny (NOID), dated August 25, 2005, the district director determined the applicant had failed establish he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988. The district director noted in the NOID that the receipt from East-West Appliance was fraudulent because the area code “718” did not come into existence until 1984; [REDACTED] was contacted and stated he did not meet the applicant until 1992 or 1993; and, [REDACTED] was contacted and stated he did not know the applicant. The district director granted the applicant 30 days to submit additional evidence. The record reflects that the applicant failed to respond to the NOID.

In a Notice of Decision (NOD), dated July 19, 2006, the district director denied the application based on the reasons stated in the NOID. The applicant, through counsel, filed a timely appeal from the district director’s decision on August 3, 2006.

On appeal, counsel asserts that the district director's decision is arbitrary and an abuse of discretion considering the testimony and documentation presented by the applicant. Counsel also states that the applicant claims he never submitted a receipt from East-West Appliances.

Counsel's assertions are not persuasive. Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

The absence of credible documentation to corroborate the applicant's claim of continuous residence in an unlawful status during the requisite period 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 that are not credible, 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 March 4, 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Due to the insufficiencies in the documentation provided, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). 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.