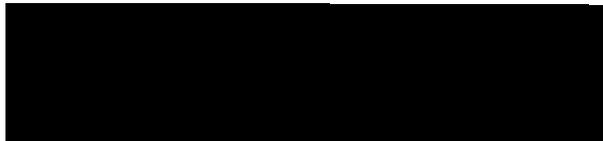




U.S. Citizenship
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Services

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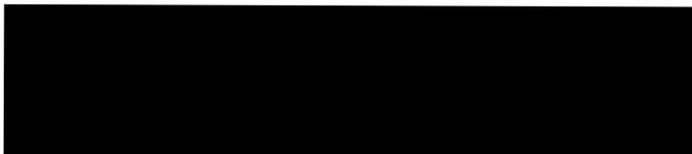
Office: NEW YORK

MAY 23

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 District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter 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 establish, by a preponderance of the evidence, that he took up residence in the United States on or prior to January 1, 1982.

On appeal, counsel for the applicant asserts that the director erred in denying the applicant's application and submits additional documentation.

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 or 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 record reflects that on October 26, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On June 22, 2004, the applicant appeared for an interview based on his application.

The director issued a Notice of Intent to Deny (NOID) the application, finding that the applicant failed to establish, by a preponderance of the evidence, that he took up residence in the United States on or prior to January 1, 1982. The director noted that the applicant stated that he entered as a crewman in September 1981, but failed to submit a Form I-95, as proof of entry. The director informed the applicant that he had 30 days from the receipt of the NOID to submit evidence to overcome the director's intent to deny his application. In response, the applicant submitted several affidavits and his passport.

On July 17, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel for the applicant asserts that the director erred in denying the applicant's application and submits additional documentation. Counsel also asserts that the applicant entered the United States as a crewman, but that he misplaced his crewman landing permit sometime in 1981.

The issue in this proceeding is whether the applicant has provided sufficient credible evidence to demonstrate that he was continuously physically present in the United States during the requisite period.

In addition to the documents submitted in response to the NOID, the record of proceedings contains several receipts and affidavits submitted with the applicant's Form I-687, Application for Status as a Temporary Resident. The following evidence relates to the requisite period:

Employment Letters

- The applicant submitted an undated letter from [REDACTED]. Mr. [REDACTED] attested that the applicant had worked for him at the [REDACTED] Construction, Inc. from September 1981, until June 1986. Mr. [REDACTED] attested that the applicant worked as a helper and was paid in cash;
- The applicant submitted an undated letter from [REDACTED] Mr. [REDACTED] attested that the applicant had worked as a helper with the Royal Bengal Construction Company since January 1989. Mr. [REDACTED] attested that the applicant worked as a helper and was paid in cash; and,
- A second letter from [REDACTED] attesting that the applicant worked at the Royal Bengal Construction Company from July 1986 to December 1988. He attested that the applicant worked as a helper and was paid in cash.

These letters can be given little evidentiary weight because they lack sufficient detail and information required by the regulations. Specifically, all of the employers failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employers also failed to declare which records their information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable. In addition, the letters listed his positions but did not list the applicant's duties.

Letters and Affidavits

- An undated letter notarized on August 10, 2006, from [REDACTED], the applicant's brother, attesting that the applicant came to the United States in September 1981 and resided with him and his cousin at [REDACTED] Brooklyn, New York;
- An undated letter, notarized on August 9, 2006, from [REDACTED] the applicant's cousin, attesting that the applicant lived with him for about six months beginning in about September 1981 to February 1982 at [REDACTED] Brooklyn, New York; and,
- An undated letter from [REDACTED] stating that the applicant has been residing in apartment [REDACTED] at [REDACTED] Brooklyn, New York since July 1, 1982.

These letters can be given little evidentiary weight because they lack sufficient detail. None of the affiants indicated how they dated the applicant's arrival in the United States. The applicant's brother does not specify how long they lived together. The applicant's brother and cousin do not indicate how often they saw the applicant after they stopped living together. Mr. [REDACTED] does

not indicate how he met the applicant, or, how frequently he saw the applicant. None of the affiants provided other details about the applicant's life in the United States.

- A letter notarized on February 24, 2004, from the Jame Masjid Bangladesh Muslim Center, Inc., in Brooklyn, New York. The letter is signed, but the signature is illegible and there is no other indication as to who signed the letter. The letter states that the applicant became a member of the center in 1986.

This letter can be given little evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letter does not explain the origin of the information given, nor does it provide the address where the applicant resided during the period of his involvement with the mosque. Furthermore, the letter does not state the frequency the applicant attended the center.

The record of proceedings contains various other documents, including an affidavit from [REDACTED] attesting that the applicant lived with him from December 1996, to at least October 11, 2006; and a letter from [REDACTED] dated October 11, 2006, attesting that the applicant worked with him as a self-employed construction helper for the last few years. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

Although the applicant has submitted numerous letters and affidavits in support of his application, he 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 remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States on December 16, 1987, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

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.