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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: TAMPA

Date:

NOV 04 2008

MSC 02 036 60910

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.

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 Director, Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 puts forth a brief disputing the director's findings. Counsel submits copies of documents that were previously provided.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(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 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.

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 during the requisite period. Here, the applicant has failed to meet this burden.

Along with his LIFE application, in an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided:

- An affidavit from Md. [REDACTED] who indicated that he has known the applicant since 1983 and attested to the applicant's moral character. The affiant asserted he and the applicant resided in the same house from 1983 to 1986.
- An affidavit from [REDACTED], who indicated that the applicant was a previous tenant residing at [REDACTED]-Fort Pierce from 1981 to 1982.
- An affidavit dated August 16, 1990 attesting to the applicant's employment at A&M discount beverage store from 1983 to 1985. The name of the individual who signed this affidavit is indecipherable.

At the time of his LIFE interview, the applicant indicated that he had lost all of his documents covering the requisite period including his passports and Form I-94.

On August 18, 2003, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits from [REDACTED] were not corroborated by any documentary evidence and lacked substantive information. The applicant was further advised that no other documents were submitted to establish his initial entry and residence in the United States during the requisite period, and that he had not provided any evidence of his June 1982 departure from the United States or his reentry with a B-2 nonimmigrant visa 30 days later.

In his Notice of Intent to Deny the director also noted that the applicant had submitted a statement from an accountant regarding the applicant's business from "1985 to 2000." However, a review of the statement signed by [REDACTED] of Sandton Management Services, reflects that the accountant attested to the applicant's business from "October 1995 to October 2000."

Counsel, in response, asserted that the applicant's papers and records were stolen in 1989. However, the applicant was unable to obtain an incident report as the Sheriff's Department had informed the applicant's spouse that it "did not maintain records for that far back." Counsel submitted an affidavit from the applicant, who indicated that he was married in Bangladesh in the customary Muslim tradition in 1981 and has resided in the United States since October 1981. The applicant listed his residences through the requisite period with [REDACTED] and other individuals as follows: 1) 1981 to 1982 at [REDACTED] Fort Pierce, Florida; 2) 1982 at [REDACTED] 1983 to 1987 at [REDACTED] Fort Pierce; and 4) from 1987 at [REDACTED] Florida. Regarding his employment during the requisite period, the applicant indicated that he worked in Fort Pierce for [REDACTED] at Price Food Warehouse in 1982; at A&M Discount Beverage Store in Fort Pierce from 1983 to 1987; at Fort Pierce "Drive In" at night from 1983 to 1987; and from 1987 to 1989, at Pic-A-Pac grocery store in Fort Lauderdale, Florida. The applicant indicated that his departure to Bangladesh in 1982 for a visit did not interrupt his continuous residence as it was for less than 30 days. The applicant indicated that he attempted to request a police report regarding the 1989 theft of his passport and documents, but was informed in 1991 by the Sheriff's Department that the report was unavailable as the department did not keep records that far back.

Counsel cited a legacy Immigration and Naturalization Service (INS) memorandum issued on February 13, 1989, which provided guidance on the evidentiary weight of affidavits in legalization applications under section 245A of the Immigration and Nationality Act.

Counsel submitted copies of documents that were previously provided including the following:

- A letter dated June 15, 2001, addressed to Broward Sheriff's Department requesting a copy of a report made on November 20, 1989. At the end of the letter is a handwritten notation indicating, "Our Records does not go back to 89."
- An affidavit from the applicant's father-in-law, who resides in Bangladesh and who attested to the marriage of his daughter to the applicant in 1981 and to the applicant's departure during the same year to the United States.
- An affidavit from a step-brother, [REDACTED] of Largo, Florida, who indicated that he and the applicant resided together from: 1) 1981 to 1982 at [REDACTED] t, Fort Pierce, Florida and that he and the applicant worked "labor work at orange groves during this period; 2) 1982 to 1983 at [REDACTED], Fort Pierce, Florida and that he and the applicant worked for [REDACTED] at Pierce Food; 3) 1983 to 1987 at [REDACTED] Florida and the applicant was employed at A&M discount beverage; and 4) 1987 at [REDACTED] Lauderdale, Florida. The affiant indicated that he assisted the applicant in filling out the Form I-687 application.
- An affidavit from [REDACTED] of Allen, Texas, who indicated that he met the applicant in November 1983 in Fort Pierce, Florida and that in 1984, he took the applicant to Sea World in Orlando, Florida. The affiant attested to the applicant's moral character.
- An affidavit from [REDACTED] of Orlando, Florida, who indicated that he had stayed with the applicant in Fort Pierce, Florida for a couple of days in 1986 and that the applicant has visited him at his residence in Orlando, Florida. It is noted that this affidavit was specifically written for the applicant's spouse; however, because the affiant made several references to the applicant it shall be included in this proceeding.
- An affidavit from [REDACTED] n of Pompano Beach, Florida, who indicated that in 1983 to 1986, he was a manager of a 7-11 store in Pompano Beach and that the applicant was a regular customer.
- A letter dated May 25, 1990, from The Circle K Corporation, which indicated that the applicant's spouse had not been approved for healthcare coverage as she was not the applicant's legal spouse. The letter also indicated that a copy of a marriage license was required.

Counsel also provided other documents that have no relevance as they serve to establish the applicant's residence and physical presence in the United States subsequent to the requisite period.

The director, in denying the application, considered the documents submitted and determined that: 1) the applicant had not provided any evidence of his 1981 marriage; 2) [REDACTED] indicated that he assisted the applicant in filling out the Form I-687 application. However, the Form I-687 application did not reflect that anyone other than the applicant completed the application; 3) [REDACTED] claimed to have resided in the same house as the applicant from 1983 to 1986, but provided no address; 4) the employment letter attesting to the applicant's employment at A&M discount beverage store failed to declare whether the information was taken from company records, and if those records were available; 5) evidence in the record reflects that the applicant's marriage occurred on May 16, 1991 in Fort Lauderdale, Florida; and 6) the author of the handwritten notation on the applicant's letter of June 15, 2001 to the Sheriff's

Department was not identified. The director determined that little probative weight could be given to the affidavits provided as they were not corroborated by any other evidence.

Regarding the applicant's legal entry into the United States in June 1982, the director noted, in pertinent part, that the applicant "made no attempt throughout the years even with aid of legal counsel to request duplicates of your entry documents. Nor did you attempt to secure records showing date and place of issuance of the passports you claimed lost. This casts grave doubt on the information in file and places continuous residence and continuous physical presence in question."

It is noted that the director inadvertently noted that [REDACTED] attested to the applicant's employment at A&M discount beverage store. A review of the affidavit, however, reflects that [REDACTED] is listed as a notary. As previously noted, the name of the individual who attested to the employment at A&M discount beverage store is indecipherable.

The director, in his decision, cited several case laws that have no relevance in this proceeding. The director's error is harmless because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, counsel asserts that the applicant has proven his eligibility as the interviewing officer never questioned the veracity of the affidavits only that they were uncorroborated. Counsel contends that the director held the applicant to a higher standard than the one Congress intended to afford LIFE Act applicants. Counsel asserts that the applicant has presented sufficient evidence to establish his eligibility by a preponderance of the evidence.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant and counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988.

The applicant, in his affidavit, indicated that he was married in Bangladesh in 1981. The applicant does not submit a copy of a marriage certificate and, therefore, it has not been proven that a marriage occurred in 1981. Furthermore, on his Form G-325A, Biographic Information, the applicant indicated that his marriage occurred on May 16, 1991 in Fort Lauderdale, Florida. Neither counsel nor the applicant has addressed this issue.

The affidavits from [REDACTED] have no probative value as the affiants failed to provide a telephone number or address and, therefore, are not amenable to verification by the CIS.

The affidavit attesting to the applicant's employment at A&M discount beverage store also has no probative value as the affiant's name and address were not provided. In addition, the affiant failed to include the applicant's address and duties at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to 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 Form I-687 application requests that the applicant list all his residences and employment in the United States since his first entry. The applicant did not list any employment and claimed only one residence commencing in 1989. This lessens the credibility of the affidavits submitted in an attempt to establish the applicant's continuous residence since before January 1, 1982 through May 4, 1988. The applicant, in affixing his signature on item 46 of the Form I-687, certified that the information he provided was *true* and *correct*.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined 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 from before January 1, 1982 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, the applicant 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.