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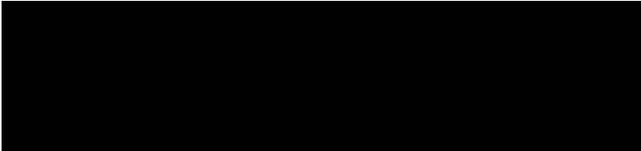
Office: NEW YORK

Date: OCT 22 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. 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 Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish that he resided in a continuous unlawful status from prior to January 1, 1982, through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

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.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

Citizenship and Immigration Services (CIS) records indicate that the applicant's initial entry into the United States was as a non-immigrant visitor (B-2) on September 17, 1990, with authorization to remain until October 15, 1990.

The applicant filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on June 3, 2002. On June 27, 2007, the director denied the application.

The applicant, a native and citizen of Bangladesh, claims to have initially entered the United States as a non-immigrant visitor in April 1981, and to have departed the United States on only one occasion prior to 1988 – from July 21, 1983, through August 19, 1983, in order to visit his seriously ill father in Bangladesh – after which he re-entered the United States again as a non-immigrant visitor. He claims to have lost his passport containing the visas and admission stamps regarding his entries in 1981 and 1983.

The record reflects that at the time of filing his Form I-485 - and also at the time of filing a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act) in or about November 1991 – the applicant claimed to have two children born in Bangladesh on May 27, 1981, and March 20, 1980. At an interview required in connection with his Form I-485, the applicant stated that his spouse had never been in the United States during the time period from January 1, 1982, to May 4, 1988.

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 record also reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

1. A prescription, dated September 6, 1985, issued to the applicant by [REDACTED] M.D., Internal – Pulmonary Medicine, Jamaica, New York. The applicant's address on the prescription is shown as [REDACTED], Astoria, New York.

2. Letters, dated November 2, 1991, from Vaughn Sweeting of Sweeting Trucking in Okeechobee, Florida, stating that the applicant was employed by him and was a tenant in his dwelling from May 1981 to the middle of July 1983.
3. A letter, dated November 2, 1991, from [REDACTED] of Okeechobee, Florida, stating that she had known the applicant since October 1981.
4. A letter, dated January 2, 1992, from [REDACTED], Foreign Student Advisor at the Career College of Northern Nevada in Reno, Nevada, stating that the applicant had been an acquaintance and had been in touch with him on and off since an unspecified date in 1982.
5. A declaration, dated May 28, 2002, from [REDACTED] of Jackson Heights, New York, stating, in part, that he had known the applicant in Bangladesh since 1965; the applicant lived with him for about two weeks in New York after his arrival in the United States in April 1981; the applicant moved to Okeechobee, Florida, in May 1981; the applicant traveled to Bangladesh briefly from July to August 1983; the applicant lived in Jackson Heights, New York, from August 1983 to February 1987, and in Astoria, New York, from March 1987 to October 1990.
6. Birth certificates for the applicant's children: [REDACTED], born in Barisal, Bangladesh, on March 20, 1981; and, [REDACTED], born in Barisal, Bangladesh on May 27, 1982.

In a Notice of Intent to Deny (NOID) the application, the director noted that pursuant to a telephone conversation with an operator at the New York Telephone Directory, the letterhead and address given on the medical receipt (No. 1, above) did not relate to Dr. Sakhujia. No response to the director's findings was provided by counsel in response to the NOID or on appeal

The employment letter provided by [REDACTED] (No. 2, above) does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to 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 affiants in Nos. 3 and 4, above, do not state in any detail how they first met the applicant in the United States, what their relationships with the applicant were, or how frequently and under what circumstances they saw the applicant during the requisite period, and provide little information for concluding that they had direct and personal knowledge of the events and circumstances of the applicant's residence and physical presence in the United States. As such, these affidavits can only be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period.

While the declaration from [REDACTED] (No. 5, above) contains more detail than the affidavits provided in Nos. 3 and 4, [REDACTED] as well as the other two affiants, has provided no evidence of his own residence in the United States during the requisite time period. While he states that he had telephone conversations with the applicant while the applicant lived in Florida from May 1981 until July 1983, he does not appear to have had direct and personal knowledge of the applicant's presence in the United States during that time period.

On appeal, counsel for the applicant states that "...the applicant claims that because of a failure of nerve, he gave erroneous information at his Form I-485 interview concerning the date of birth of his children. The correct birth dates 3/20/1980 and 5/27/1981 are listed in his I-687 and I-485 applications...."

The documents contained in No. 6, above, clearly show that the applicant's children were born on May 20, 1981, and May 27, 1982 - not May 20, 1980, and May 27, 1981, as listed on his Forms I-687 and I-485. Therefore, if the applicant initially entered the United States in April 1981, as claimed; had not returned to Bangladesh until July 1983, as claimed; and his wife had not been present in the United States since his initial entry in April 1981 and departure in July 1983, as claimed; it would not be possible for him to have had a child born in Bangladesh in May 1982. These discrepancies in the applicant's submissions have not been adequately explained on appeal. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no attestations from churches, unions, or other organizations according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists of medical prescription lacking credibility and third-party affidavits ("other relevant documentation"). These documents, for the most part, lack specific details as to how the affiants knew the applicant - how often and under what circumstances they had contact with the applicant - during the requisite time period from 1982 through 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 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

The AAO finds that upon an examination of the record and each piece of documentation provided for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown 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). Thus, 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.