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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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[REDACTED]

FILE: [REDACTED]
MSC 02 075 60522

Office: NEW YORK

Date: **SEP 02 2008**

IN RE: Applicant: [REDACTED]

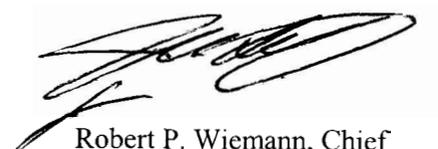
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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: On April 23, 2007, the District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit credible documents to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts that the director erred in his decision and submits an original residential lease.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 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 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 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.13(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.

The first issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The record reflects that on December 14, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On June 17, 2004, the applicant appeared for an interview based on the application.

The applicant has provided the following evidence relating to the requisite period:

Contemporaneous Evidence

- A lease dated July 6, 1984. This document can be given minimal weight as evidence of the applicant's continuous residence and continuous physical presence during the required periods. First, although the lease is for a different apartment, it is for an apartment in the same building the applicant currently lives in, [REDACTED], in Brooklyn, New York. Despite this fact, the applicant has not provided any documentation to corroborate the information contained in the lease, such as a letter from the landlord or rent receipts. Second, the lease only covers two of the more than seven years of the statutory period and would only serve to verify that the applicant rented an apartment in Brooklyn, from July 1, 1984, to July 1, 1986. Absent documentation to establish his continuous residence and continuous physical presence during the remaining statutory period, this document, by itself, is not sufficient to meet the applicant's burden of proof; and,
- A photocopy of the applicant's Bangladeshi passports;

Letters and affidavits

- A letter sworn to on November 11, 2006, from [REDACTED] stating that he has known the applicant since 1982. Mr. [REDACTED] states that the applicant was living at [REDACTED] in Brooklyn, New York from mid 1982 to mid May 1984, and that

he was working in construction from time to time after that period. This letter can be given little weight as evidence of the applicant's continuous residence and continuous physical presence during the requisite period. Although the affiant claims to have lived with the applicant for two years, he fails to indicate any knowledge of the applicant's travel to or entry into the United States or the circumstances regarding the applicant's residence in the United States. He does not indicate how, exactly when, or where he met the applicant or how he recalls that the he first met the applicant in 1982. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States for the requisite period.

The record of proceedings contains other documents, including bills from NYNEX and Bell Atlantic from 1996 through 2001. These documents all indicate physical presence after May 4, 1988, and do not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States on June 26, 1974, and to have resided for the duration of the requisite period in Florida and 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.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 on his passport and a single affidavit, which lacks relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act.

The second issue in this proceeding is whether the applicant's absence from the United States constitutes a break in his required continuous residence and continuous physical presence.

According to 8 C.F.R. § 245a.15(c)(1), an applicant for adjustment of status under the LIFE Act shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all

absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

An applicant under the LIFE Act must also establish that he or she was continuously physically present in the United States from November 6, 1986, through May 4, 1988. *See* 8 C.F.R. § 245a.16(a). According to 8 C.F.R. § 245a.16(b):

For purposes of this section, 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. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, 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. (Amended 6/4/02; 67 FR 38341)

Determinations are made on a case-by-case basis as to whether a departure which occurred during the regulatory period can be considered brief, casual, and innocent. *See* Memorandum, *Proposed Amendment to Regulatory Definition of "Brief, Casual, and Innocent, as Found in 8 C.F.R. 245a.2(1)(2)*, Office of Executive Associate Commissioner for Operations, July 18, 1991. In evaluating the disruption of continuous physical presence, the following will be considered: the duration of the absence, the purpose of the departure, actions of the alien during the absence, and other relevant factors. *Id.*

The regulation at 8 C.F.R. § 245a.15(c)(1) provides an exception to the continuous residence requirement, if a single absence exceeded 45 days, and the aggregate of all absences did not exceed 180 days between January 1, 1982, through the date the application is filed, if the applicant can establish that due to emergent reasons, his return to the United States could not be accomplished within the time period allowed.

The relevant issue under the regulation is not the fact that the applicant's stay was lengthened by complications, but rather whether the applicant, when leaving the United States, reasonably expected to return within the 45 day time limit, *Ruginsky v. INS*, 942 F.2d 13 (1st Cir. 1991).

Here, the applicant has provided inconsistent oral written testimony about when, why, and for how long he left the United States. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has established that he came to the United States on June 26, 1974, using a validly issued Crewman's Landing Permit. However, it also appears that the applicant did not continuously reside in the United States, thereafter.

During his interview and on his Form I-687 and Legalization Questionnaire, the applicant claimed to have departed the United States in May 1984 and returned in January 1986. In response to the NOID, the applicant stated that he got married in October 1979 and returned to the United States on March 18, 1980. He states that he then traveled to see his wife several times. He asserts that he went to visit his wife from May 18, 1984, to June 17, 1984, but his passport indicates that he entered Bangladesh on May 20, 1984, and did not exit until December 19, 1984. He also asserts that he went to visit his wife from November 22, 1986, to December 23, 1986, but his passport indicates that he was in Muscat, Oman on December 28, 1986, when he was issued an entry visa to Oman. The passport also indicates that the applicant entered Bangladesh on February 26, 1987, even though he does not list any exit from the United States in 1987.

In his response to the NOID, the applicant attempted to explain or reconcile these significant inconsistencies by stating that he only left the United States three times and that his departures were brief, casual, and innocent. He does not assert nor does he submit documentary evidence to establish that his trips to Bangladesh were for emergent reasons. Not only is the applicant's attempt to explain these inconsistencies insufficient, it is contradicted by his passport, which shows that he was indeed outside of the United States for longer than 45 days on several occasions.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The applicant is, therefore, 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.