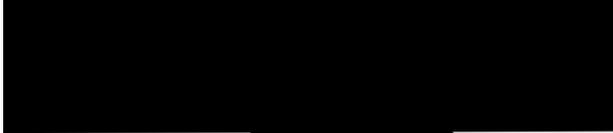




U.S. Citizenship
and Immigration
Services

IDENTIFICATION COPY
Identifying data deleted to
prevent identity unwarranted
invasion of personal privacy

L2



FILE: [REDACTED]
MSC 02 009 62460

Office: NEW YORK

Date: SEP 05 2008

IN RE: Applicant: [REDACTED]

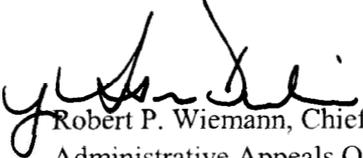
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant reiterated his claim of residence in this country since November 1980. The applicant submitted documentation in support of the appeal.

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. Section 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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of information contained in the attestation.

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.* At 80. 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. *Id.*

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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on November 20, 1991. At part #33 of the Form I-687 application, where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] in Long Island City, New York from November 1980 to May 1990. Further, at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, et cetera, the applicant listed an association with the Islamic Council of America Inc., at [REDACTED] in New York, New York from January 1982 through the date the Form I-687 application was filed on November 20, 1991. In addition, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant indicated that he was employed as a dishwasher at three different establishments in New York, New York, specifically the Indian Resort and Restaurant Inc., from November 1980 to June 1983, Bombay Palace from October 1983 to December 1987, and One Fifth Bar Restaurant from January 1988 to June 1990.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted two original postmarked envelopes. However, these two envelopes were mailed to the applicant at an address where he claimed to have resided after the termination of the requisite period on May 4, 1988, and therefore, cannot be considered as probative of his claimed residence in the United States from prior to January 1, 1982 to May 4, 1988.

The applicant provided an affidavit that is signed by [REDACTED]. Mr. [REDACTED] indicated that he had personal knowledge that the applicant resided at that street address listed by the applicant at part #33 of the Form I-687 application from 1980 up through May 31, 1990. Mr. [REDACTED] declared that the source of his knowledge relating to the applicant's residence was based upon his acquaintance with the applicant as a friend.

The applicant included an affidavit signed by [REDACTED] who stated that he was the applicant's roommate at that street address listed by the applicant at part #33 of the Form I-687 application from 1980 until May 1990.

The applicant submitted an employment letter containing the letterhead of Indian Resort and Restaurant at [REDACTED] in New York, New York that is signed by [REDACTED] who listed his position as manager of this establishment. Mr. [REDACTED] noted that the applicant worked as a dishwasher at Indian Resort and Restaurant from November 1980 to June 1983 and that he had been paid in cash during this period. However, Mr. [REDACTED] failed to provide the applicant's address at the time of his employment at this enterprise as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, Mr. [REDACTED] failed to attest to the applicant's residence in the United States after June 1983 through May 4, 1988.

The applicant provided an employment letter containing the letterhead of the Bombay Palace at [REDACTED] in New York, New York that is signed by [REDACTED] who listed his position as manager of this enterprise. Mr. [REDACTED] declared that the applicant worked as a dishwasher at Bombay Palace from October 1983 to December 1987 and that he had been paid a weekly salary of \$300.00 during this period. Nevertheless, Mr. [REDACTED] failed to provide the applicant's address at the time of his employment at this establishment as required by 8 C.F.R. § 245a.2(d)(3)(i). In addition, Mr. [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 until October 1983 and after December 1987 through May 4, 1988.

The applicant included an employment letter containing the letterhead of One Fifth Bar Restaurant in New York, New York that is signed by [REDACTED] who listed his position at this business as manager. Although [REDACTED] stated that the applicant was an employee of One Fifth Bar Restaurant, he failed to provide either the dates of the applicant's employment or the applicant's address during such employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

Subsequently, on October 9, 2001, the applicant filed his Form I-485 LIFE Act application. The applicant included new as well as previously submitted documentation in support of his claim of residence in the United States for the requisite period with the Form I-485 LIFE Act application.

The applicant provided an affidavit signed by [REDACTED] who noted that the applicant was a long time friend who visited him frequently and attested to the applicant's residence in this country since June 1982. Mr. [REDACTED] declared that he accompanied the applicant when he attempted to submit a legalization application at a Service Office in New York, New York on

December 9, 1987, but a Service officer refused to accept the application and informed the applicant that he was not eligible for legalization as a result of his absence from the United States during the requisite period. Mr. [REDACTED] stated that the applicant made other unsuccessful attempts to file his legalization application with the Service during the application period. However, Mr. [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 through June 1982. While Mr. [REDACTED] provided detailed testimony regarding the applicant's attempt to apply for legalization on December 9, 1987, he failed to put forth any other direct, specific, and verifiable information to corroborate the applicant's claim of residence in the United States for the period in question.

The applicant submitted an affidavit that is signed by [REDACTED]. Mr. [REDACTED] indicated that he had known the applicant for a long time with the applicant visiting him on an occasional basis at his residence in New York until he moved in 1998. Mr. [REDACTED] stated that the applicant had visited him during the second week of December 1987 and related how he had recently attempted to submit a legalization application at a Service Office in New York, New York, but a Service officer refused to accept the application and informed the applicant that he was not eligible for legalization as a result of his absence from the United States during the requisite period. Although [REDACTED] testified that he had known the applicant for a long time, he failed to specify the date he first became acquainted with the applicant much less the date the applicant began residing in this country. Further, [REDACTED] acknowledged that his testimony relating to the applicant's attempt to apply for legalization in December 1987 was based upon what the applicant had told him rather than his own personal knowledge and experience.

The applicant included an affidavit signed by [REDACTED] who indicated that he had been a friend of the applicant for a long time as both he and the applicant were from Bangladesh. Mr. Ali stated that he had personal knowledge that the applicant resided in the United States since 1986 as the applicant used to visit him occasionally. However, [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 up through 1986. Additionally, [REDACTED] failed to provide any pertinent and detailed testimony to substantiate the applicant's residence in the United States from 1986 to May 4, 1988, despite claiming to possess personal knowledge of the applicant's residence in this country since 1986.

The applicant provided a letter dated November 5, 1991 containing the letterhead of the Islamic Council of the America Inc., at [REDACTED] in New York, New York that is signed by [REDACTED] who listed his position as president. Mr. [REDACTED] provided the applicant's address as of the date of the letter and declared that the applicant was a member of this organization and had been offering prayers and attending other religious activities for a long time. Nevertheless, [REDACTED] did not specify the applicant's inclusive dates of membership in the Islamic Council of the America Inc., and failed to list any additional addresses where the applicant may have resided during his entire membership period with this organization as required by 8 C.F.R. § 245a.2(d)(3)(v).

The applicant submitted photocopies of a passenger ticket and baggage claim for airplane flights from New York to London, England to Dhaka, Bangladesh on August 15, 1983 and August 16, 1983, respectively. However, the probative value of this ticket and baggage claim is minimal as the only information relating to the applicant within the ticket being a handwritten notation containing the applicant's name.

The applicant included six photocopied envelopes postmarked June 20, 1981, May 22, 1982, September 1, 1983, an indeterminate day of February 1985, April 10, 1986, and December 30, 1987, respectively. These six envelopes contain Bangladeshi postage stamps and were purportedly mailed to the applicant from Bangladesh at the address he claimed to have resided on these dates. While the applicant also submitted additional photocopied envelopes, such envelopes are not probative of the applicant's claim of residence in the United States for the requisite period as these remaining envelopes were mailed to the applicant after May 4, 1988.

On May 2, 2007, the district director issued a notice of intent to deny the application to the applicant for failure to submit sufficient evidence of his continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. In addition, the district director stated that the applicant had provided testimony and a sworn statement at his interview on February 18, 2004 in which he admitted to only one absence, from September 5, 1987 to October 5, 1987, from this country during the requisite period. However, a review of documents contained in the record, including the notes of the CIS officer who interviewed the applicant on February 18, 2004, demonstrates that the applicant has readily and consistently admitted that he was also absent from the United States when he traveled to Bangladesh from August 1983 to September 1983. Furthermore, the record does not contain a sworn statement from the applicant in which he acknowledged that he had only one absence from this country during the requisite period. Consequently, it cannot be concluded that the applicant's credibility has been damaged based upon the district director's findings relating to the applicant's purported absence from the United States in 1983. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which he reiterated his claim of residence in the United States since November 1980 and noted the difficulty in obtaining documentation in support of such claim because of his status as an undocumented alien during the requisite period.

The applicant provided an affidavit that is signed by [REDACTED] Mr. [REDACTED] noted that he first met the applicant at his residence in New York in January 1981. Mr. [REDACTED] indicated that a relative of the applicant, who also happened to be his friend, advised the applicant to seek him out for help and assistance after the applicant arrived in the United States from Bangladesh. Mr. [REDACTED] declared that he and the applicant established a good relationship with the applicant continuing to visit on occasion and for religious events. However, [REDACTED] failed to provide any specific and verifiable information relating to the applicant's residence in this country from prior to January 1, 1982 through May 4, 1988.

The applicant included an affidavit signed by [REDACTED] who indicated that he first met the applicant in March 1981 when the applicant visited him at his residence based upon referral from a relative in Bangladesh. Mr. [REDACTED] stated that the applicant related how he first entered the United States by crossing the border from Mexico without inspection in November 1980 and subsequently traveling to New York. Regardless, [REDACTED] failed to offer any relevant and detailed testimony to corroborate the applicant's claim of residence in this country for the requisite despite claiming to possess direct personal knowledge of the applicant's residence in the United States since they first met in March of 1981.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on August 1, 2007.

On appeal, the applicant reiterated his claim of residence in this country since November 1980 and once again noted the difficulty in obtaining documentation in support of such claim because of his status as an undocumented alien during the requisite period. The applicant included copies of previously submitted documentation in support of the appeal. However, the supporting documents contained in the record lack specific detail and verifiable information to substantiate the applicant's claim of residence in the United States for the period in question.

As previously discussed, the applicant submitted photocopies of six postmarked envelopes with the Form I-485 LIFE Act application that was filed on October 9, 2001. These six photocopied envelopes are postmarked June 20, 1981, May 22, 1982, September 1, 1983, an indeterminate day of February 1985, April 10, 1986, and December 30, 1987, respectively, contain Bangladeshi postage stamps, and were purportedly mailed to the applicant from Bangladesh at the address he claimed to have resided on these dates. A review of the *2006 Scott Standard Postage Stamp Catalogue Volume 1* (Scott Publishing Company 2005) reveals the following:

- The envelopes postmarked June 20, 1981, May 22, 1982, and September 1, 1983 all bear two of the same postage stamps each with a value of two takas that depict the terminal at Zia International Airport. This stamp is listed at page 661 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 242 A70. The catalogue lists this stamp's date of issue as December 21, 1983. The envelopes all bear another postage stamp with a value of ten takas that depicts the Chittagong Urea Fertilizer Plant. This stamp is listed at page 664 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 352 A123. The catalogue lists this stamp's date of issue as July 8, 1989.
- The envelope postmarked on an indeterminate day in February 1985 bears the same postage stamp with a value of ten takas that depicts the Chittagong Urea Fertilizer Plant. This stamp is listed at page 664 of Volume 1 of the *2006 Scott*

Standard Postage Stamp Catalogue with catalogue number 352 A123. The catalogue lists this stamp's date of issue as July 8, 1989.

- The envelope postmarked April 10, 1986 contains a postage stamp with a value one taka that depicts a woman health care worker administering an immunization to a male child. This stamp is listed at page 663 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 289 A89. The catalogue lists the date of issue for this stamp as April 7, 1987. The envelope contains a postage stamp with a value of twenty-five paisas that depicts a woman providing oral re-hydration to a young child. The stamp is also listed at page 663 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 318 A89. The catalogue lists the date of issue for this stamp as January 16, 1988. The envelope also contains a stamp with a value of three takas that depicts cargo being loaded on a jet airplane. This stamp is listed at page 664 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number 350 A121. The catalogue lists the date of issue for this stamp as April 30, 1989.
- The envelope postmarked December 30, 1987 contains a postage stamp with a value of twenty-five paisas that depicts a woman providing oral re-hydration to a young child. The stamp is also listed at page 663 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 318 A89. The catalogue lists the date of issue for this stamp as January 16, 1988. The envelope also contains a stamp with a value of three takas that depicts cargo being loaded on a jet airplane. This stamp is listed at page 664 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number 350 A121. The catalogue lists the date of issue for this stamp as April 30, 1989.

The fact that envelopes postmarked June 20, 1981, May 22, 1982, September 1, 1983, an indeterminate day of February 1985, April 10, 1986, and December 30, 1987, all bear stamps that were not issued until after the date of these postmarks establishes that the applicant utilized documents in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. By engaging in such an action, the applicant has seriously undermined his own credibility as well as the credibility of his claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the 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, 591-92 (BIA 1988). The above derogatory information indicates that the applicant made material

misrepresentations in asserting his claim of residence in the United States for the period in question and thus casts doubt on his eligibility for adjustment to permanent residence under the provisions of the LIFE Act.

The AAO issued a notice to the applicant on July 15, 2008 informing him that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he utilized the postmarked envelopes cited above in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. The applicant was granted fifteen days to provide evidence to overcome, fully and persuasively, these findings.

In response, the applicant requested that he be provided with an extension in order to obtain evidence, necessary information, and documents. The applicant was granted an extension until August 15, 2008 to provide a substantive response to the AAO's notice. However, the record shows that as of the date of this decision, the applicant has failed to submit any further statement, brief, or evidence to respond to the notice issued by the AAO. Therefore, the record must be considered complete.

The existence of derogatory information that establishes the applicant used postmarked envelopes in a fraudulent manner and made material misrepresentations seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, 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 May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documents, we affirm our finding of fraud. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

ORDER: The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.