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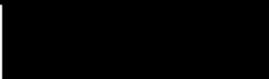
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEW YORK Date: SEP 09 2008

MSC 03 098 60369

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:

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.

A handwritten signature in cursive script, appearing to read "R. Wiemand".

Robert P. Wiemand, 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 regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] to act on behalf of the applicant, [REDACTED] is no longer authorized to represent the applicant pursuant to 8 C.F.R. § 292.1(a).<sup>1</sup> As such, the decision will be furnished only to the applicant.

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 from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserts that he lost his seaman's book in 1981 and that he was not in Berlin (Germany) on December 15, 1983. The applicant submits additional evidence in support of his appeal.

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

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<sup>1</sup> See <http://www.usdoj.gov/eoir/profcond/chart.htm>

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.

The record reflects that on December 1, 1998, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant by his former spouse. Along with the Form I-130, a Form I-485 application was filed by the applicant.<sup>2</sup> On the Form I-485 application, the applicant indicated that he had six children born in Bangladesh and listed his children's dates of birth as February 5, 1982, January 4, 1983, April 4, 1984, February 26, 1987, December 31, 1989, and May 6, 1991.

On his LIFE application, the applicant claimed to have no children, and provided a letter indicating that he was submitting "mails, Letter from an Organization, Letter from the Employers Etc." as evidence of his continuous residence during the requisite period. The record, however, only contains a copy of the applicant's seaman book and a letter dated May 20, 1991, from Bangladesh Society Inc., in New York, which attested to the applicant's association with its organization since July 1984.

At the time of his LIFE interview, the applicant informed the interviewing officer that he did not have any additional documents to submit to establish continuous unlawful residence during the requisite period.

On March 23, 2005, the director issued a Notice of Intent to Deny, which advised the applicant that his seaman book indicated that he was in Berlin, Germany on December 15, 1983 and that the record contained no evidence of a departure and reentry into the United States during this period. The applicant was advised that [REDACTED], Secretary General of Bangladesh Society, Inc., in New York was contacted by telephone and he indicated that there was no Bangladesh Society Inc., from 1984 through May 4, 1988; the society came into existence in 1990. The applicant was advised that at the time of his interview, he indicated that his spouse had never visited the United States, Mexico or Canada during the requisite period and that he had only departed the United States once since his initial entry of November 1981. The director determined that based on these statements coupled with the fact that the applicant's children were born in Bangladesh and the applicant's failure to disclose his children's dates of birth on his LIFE application severely undermined the applicant's credibility to have continuously resided in the United States during the requisite period.

The applicant was granted 30 days in which to respond to the notice; however, no response was received prior to the issuance of the director's Notice of Decision dated September 30, 2006.

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<sup>2</sup> The Form I-485 application based on the filing of the Form I-130 was denied on September 30, 2006.

The director, in issuing her Notice of Intent to Deny, also drew extensively from the questions and answers provided at the time of the applicant's LIFE interview. However, neither the interviewing officer's notes nor a signed statement executed by the applicant corroborating the interviewing officer's questions, which would further impact adversely on the applicant's credibility, were incorporated into the record. Accordingly, the AAO finds that there is insufficient evidence in the record to support the director's findings that the applicant's oral testimony was inconsistent with other information in the record, and these findings are withdrawn.

On appeal, the applicant asserts, that he only has three biological children born in 1982, 1989 and 1991; the other children were adopted by his wife. Regarding his seaman's book, the applicant asserted that he "did work in the ship before 1981. Then his seaman book was lost in 1981. There is no way that he was in Berlin on Dec.15<sup>th</sup>, 1983. He was in U.S.A. at that time. Some one may have mis-used his sea-man book." Regarding the letter from Bangladesh Society Inc., New York, the applicant asserts that the organization "has been in existence since 81 but it was registered only in 1990." The applicant submits

- An affidavit notarized October 17, 2006, from [REDACTED] of New Jersey, who indicated that the applicant resided in Brooklyn, New York since October 1981.
- An affidavit notarized October 17, 2006, from [REDACTED] of Brooklyn, New York, who attested to the applicant's Brooklyn residence at [REDACTED] since January 1981.
- A receipt dated December 21, 1981, from Lowe's Custom Tailors Inc., in Brooklyn, New York.
- A letter from [REDACTED] manager of [REDACTED] of Brooklyn, New York, who attested to the applicant's residence at [REDACTED], Brooklyn, New York from 1981 to April 1988. The affiant asserted that the applicant was in his employ as a helper and received his wages in cash.
- A letter dated February 1, 1988, from [REDACTED] of N.S. General Contractor of Brooklyn, New York, who indicated that he has been acquainted with the applicant from 1981 to 1987.
- A statement from [REDACTED] who indicated that the applicant had been known to him since 1981.
- A letter from [REDACTED] of J. H. Construction, Inc. in Brooklyn, New York, who indicated that the applicant was in his employ from May 1988 to April 1990 as a construction helper.
- An additional letter from Bangladesh Society Inc., New York indicating that the applicant has been a member of its organization since 1981 and that the organization was registered in 1991.

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 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, as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. [REDACTED] in his affidavit, attested to the applicant's residence in Brooklyn, New York since October 1981. However, the applicant did not claim to have entered the United States until November 1981. In addition, the affiant failed to provide details regarding the nature or origin of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.
2. [REDACTED], in his affidavit, attested to the applicant's residence at [REDACTED] Brooklyn, New York, since January 1981. The applicant, however, did not claim to have resided at this residence on his Form I-687 application. In addition, the affiant failed to provide details regarding the nature or origin of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.
3. [REDACTED], in his letter, indicated that the applicant was in his employ from 1981 to April 1988 and [REDACTED], in his letter, indicated that the applicant was in his employ since May 1988. Although item 36 of the Form I-687 application requests the applicant to list the full name and address of each employer during the requisite period, the applicant did not list any employer's name. The applicant indicated that he worked as a "free-lancer" which began in April 1982. Each 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).
4. The letter from [REDACTED] lacks probative value as it appears that the applicant's name and address had been added to the letter at a later time as the affiant refers to the wrong gender when describing the affiant.
5. [REDACTED] merely indicates that he has been acquainted with the applicant. The affiant makes no attestation to the applicant's place of residence in the United States, and does not provide any details regarding the nature or origin of his relationships with the applicant or the basis for his continuing awareness of the applicant's residence.
6. The additional letter from Bangladesh Society, Inc., New York, has little probative value as the applicant indicated on his Form I-687 application that he was *not* affiliated with any associations, clubs and organization during the requisite period. Further, this letter has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests.
7. The applicant has claimed to have been married three times. A marriage and divorce certificate was submitted indicating that the applicant's first marriage to a Bangladeshi occurred on January 3, 1981 and ended on December 11, 1996. The applicant indicated on his Form I-325A, Biographic Information, signed December 24, 2002, that he was married to his second wife, a Bangladeshi, on August 7, 1988. Although the applicant was requested at the time of his LIFE interview to submit his original marriage and divorce certificates, the applicant failed to provide evidence establishing that a marriage and subsequent divorce from

the second wife had occurred. The Form I-130 indicates that he was married to a United States citizen on November 17, 1998.

8. The applicant claims that three of his children were adopted by his wife; however, he has not provided any evidence to support his claim or indicated which wife had purportedly adopted the children. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). It is noted that on his Form I-687 application, the applicant listed another child who was born May 7, 1988 in Bangladesh.

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).

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 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). 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.