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U.S. Citizenship
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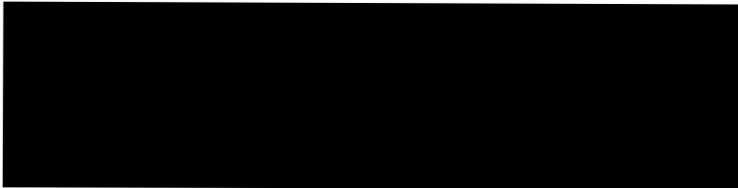
Office: NEW YORK

Date: **SEP 10 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: On December 14, 2006, 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 that constitute a preponderance of the evidence as to his residence in the United States during the statutory period. The director found that the date-stamped envelopes the applicant submitted were suspect because they bore no U.S. Postal Service stamps, only franks from Bangladesh and that that Bangladesh did not begin franking international mail until February 19, 1984. The director found that the affidavits the applicant submitted were fraudulent, unverifiable, and void of probative value. The director noted that during his interview, the applicant was unfamiliar with two of the individuals, [REDACTED] and [REDACTED], who wrote affidavits on his behalf. The director further noted that affidavits from [REDACTED] and [REDACTED] were notarized by [REDACTED] an individual who was convicted for supplying altered documents to applicants. The director concluded that these affidavits were fraudulent and of no probative value.

Counsel asserts that the applicant entered the United States on November 5, 1981, and that he could not provide all necessary documents because he was undocumented and moved around a lot. Counsel asserts that the applicant's testimony may have been vague during his interview because he felt intimidated by the interviewing officer. In a statement submitted on appeal, the applicant asserts that, to the best of his knowledge, the Postal Service in Bangladesh began using the franking machine in the early 1980's, before the date of his submission of the envelopes. He states that he does not think he was asked about [REDACTED] and [REDACTED] during his interview and does not recall having answered that he did not know them. He does not, however, state or explain who they are. He further asserts that he is unaware of [REDACTED]'s conviction.

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 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 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 August 27, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On May 22, 2002, the applicant appeared for an interview based on the application.

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

Contemporaneous Evidence

- Three envelopes addressed to the applicant in Long Island, New York, from Bangladesh, date stamped on June 17, 1982, January 18, 1983, and September 9, 1985. (Several other envelopes were submitted that are not relevant to the requisite period). The director concluded that the franking on these envelopes must be fraudulent because Bangladesh did not start franking international mail until 1984. The applicant responds that according to people he knows, the Bangladesh postal service was using franking machines during this period. Neither the director nor the applicant provides a source for their information. The address on the envelopes is consistent with information provided on the applicant's Form I-687, Application to Register as a Temporary Resident. However, even if this evidence were credible, these three envelopes, two of which are dated more than two years apart, can be given minimal evidentiary weight, as they are insufficient to establish the applicant's continuous residence and physical presence from prior to January 1, 1982, through May 1, 1988.

Employment Letters

- A letter dated April 12, 1992, from [REDACTED] stating that the applicant was employed by [REDACTED] from August 1987 to August 1991 as an office cleaner. He states that he is sincere and hardworking;

A letter dated May 4, 1992, signed by [REDACTED] the manager of Barnum & Souza in New York City. Mr. [REDACTED] states that the applicant worked part time as an assistant to their driver from December 1981 to May 1987. He states that the applicant was paid cash. He states that the applicant is sincere and well behaved; and,

- A letter dated November 10, 1987, signed by [REDACTED] of Happy Construction, certifying that the applicant was attached to the company as a part-time helper from July 1986 to the end of September 1987. He states that the applicant is sincere, loyal, and hardworking.

Little if no evidentiary weight can be given to these letters. Specifically, the employers failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employers also failed to declare whether the information was taken from company records, and identify the location of such company records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable. They did not identify any periods of layoff and or list the applicant's duties with the companies in any detail.

Letters and affidavits

- An “Affidavit of Witness” form sworn to on July 17, 1992. The form, signed by [REDACTED], indicates that the affiant has personal knowledge that the applicant has resided in the United States in New York from November 1981 to present time. The form allows the affiant to fill in a statement that he or she “is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): _____.” [REDACTED] left that part blank. This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period. [REDACTED] fails to indicate any personal knowledge of the applicant’s claimed entry to the United States or of the circumstances of his residence other than the city where he resided;
- An affidavit dated July 2, 1992, from [REDACTED]. [REDACTED] states that he has known the applicant for a long time. He states that they met in 1981 when they worked together at Barnum & Souza. He asserts that they subsequently met each other on and off and at various community occasions and that their relationship has grown. He states that sometimes he visits the applicant at his house and vice versa. He states that he wishes the applicant success in his endeavors. This letter provides minimal details of the affiant’s personal knowledge of the applicant’s continuous residence and continuous physical presence in the United States. He does not indicate where in the United States the applicant has lived for the past 25 years or what the applicant has been doing during this time period. He states that they see each other regularly but does not specify how often that is and provides no details about the visits he has with the applicant. As such, this letter can therefore be given little weight as evidence of the applicant’s continuous residence during the requisite period;
- Three affidavits sworn to in June and July 2001, from [REDACTED], [REDACTED], and [REDACTED]. All three affiants state that they have known the applicant since about September 1983. All three indicate the applicant’s current address and that the applicant entered the United States at Miami without inspection. All three state that the applicant is a CSS v. Reno class member. [REDACTED] states that he also knows that the applicant has resided at the same five addresses and same four employers listed on his Form I-687, Application to Register as a Temporary Resident, but does not explain how he knows all of this. [REDACTED] goes into more detail than the other two about what happened when the applicant was rejected for legalization in 1987, because he accompanied the applicant to the INS office at the time. [REDACTED] provided similar details because he was home when the applicant and [REDACTED] returned from the INS office that day. These affidavits serve primarily to describe what happened to the applicant when he tried to file a legalization application in 1987. They can be given little weight as evidence of the applicant’s continuous residence in the United States during the requisite period. The affiants provide minimal details of their personal knowledge of the applicant’s entry into the United States and of his continuous residence;

- A letter dated July 19, 2001, from the Bangladesh Society in Long Island, New York, signed by [REDACTED], the General Secretary. [REDACTED] states that applicant is currently a member of the Society, has been since 1983, and has been involved with the Society's activities for many years. This letter can be given minimal evidentiary weight and has little probative value as it lacks sufficient details. Specifically, the letter does not explain the origin of the information given, nor does it provide the address where the applicant resided during the period of his involvement with the Society. Furthermore, the letter does not state the frequency the applicant participated in activities with the Society or provide any relevant details about the nature of these activities;
- An undated affidavit from [REDACTED] stating that he and the applicant were introduced in summer of 1985 by [REDACTED], the applicant's roommate at the time. [REDACTED] states that they became close family friends. He states that the applicant approached him in the middle of 1986 for a job at the Hard Rock Café but that he could not help the applicant because he lacked legal status and work authorization;
- Letters dated in 1992 and 1993 from [REDACTED] and [REDACTED]. Mr. [REDACTED] letter is written on letterhead stationary from the Jamaica Muslim Center and [REDACTED] on letterhead from the Equitable Financial Companies. [REDACTED] and [REDACTED] attest that they have personally known the applicant since 1981. [REDACTED] simply states that he has known the applicant for a "long time." They attest to his honesty, sincerity, and hard work. They provide minimal details about the circumstances of his residence in the United States and appear to have no personal knowledge of his initial entry into the United States; and,
- A declaration sworn to on July 23, 1992, from [REDACTED] d. Mr. [REDACTED] states that he has personal and first hand knowledge of the applicant's absence from the United States from June 1, 1987, to June 28, 1987, because he went with the applicant to the airport when he departed for Bangladesh. This affidavit serves to show that the applicant traveled outside the United States in 1987. It can be given no weight as evidence of the applicant's initial entry into the United States in 1981 and of his continuous residence during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. Furthermore, while the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period.

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 without inspection in October 1981, and to have resided for the duration of the requisite period in 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 affidavits alone, which lack 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 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.