U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: AUG 06 2008

MSC 02 024 62392

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: The District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not met his burden of proof to establish, by a preponderance of the evidence, that he had continuously resided in the United States in an unlawful status during the requisite period. The director found that the applicant's oral testimony and the information he provided in his application lacked credibility. The director also found that the applicant was statutorily ineligible for adjustment under the LIFE Act due to submission of fraudulent documents.

On appeal, counsel for the applicant asserts that the director denied the Form I-485, Application to Register Permanent Resident or Adjust Status and the Form I-687, Application to Register for Temporary Resident Status, on the same basis as stated in the Notice of Intent to Deny (NOID) sent on January 24, 2006 - that four affidavits from the applicant's friends and coworkers were not credible or amenable to verification. He asserts that the applicant's lawyer at the time clarified in a rebuttal to the NOID that a letter from [redacted] was verifiable by giving his current telephone number. Counsel asserts that there is no evidence that the Service attempted to contact [redacted] and failed or that the director spoke with him. The AAO will adjudicate the applicant's Form I-687 in a separate decision.

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).

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). 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.2(d)(6).

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 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment should be on employer letterhead stationary, if the employer has such stationary, and 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 record reflects than on October 24, 2001, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status. On July 21, 2003, the applicant appeared for an interview based on his application.

On January 21, 2005, the director sent the applicant a Notice of Intent to Deny (NOID) the application, finding that there were significant and glaring discrepancies between the applicant's oral testimony during his interview and documents contained in the applicant's file. The interviewing officer found that the applicant lacked credibility and that the applicant was ineligible to adjust status under Section 245a(6)(c) – fraud. The interviewing officer claimed that the airline ticket and Form I-94, Arrival/Departure Record the applicant submitted to show a return trip to the United States in 1983 were fraudulent. The interviewing officer noted that the telephone number provided for a previous employer, the Riese Organization, did not correspond to the address and location also provided. The interviewing officer also found that the applicant did not submit sufficient evidence to establish his continuity in the United States prior to January 1, 1982, through May 4, 1988. The applicant was informed that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

On April 19, 2006, the director found that the applicant failed to submit additional evidence for consideration and denied the application for the reasons stated in the NOID.

On appeal, counsel asserts that the applicant's former attorney, in response to a January 24, 2006, NOID, clarified that a letter from [redacted] was verifiable by giving his current telephone number. Counsel asserts that there is no evidence that the Service attempted to contact [redacted] and failed, or that it spoke with him. Counsel appears to be confusing the January 21, 2005, NOID, sent in connection with the current Form I-485 application under the LIFE Act, with a January 24, 2006, NOID, sent in connection with the Form I-687 application under the Immigrant Reform and Control Act (IRCA) the applicant filed on June 8, 2005.

After careful review of the documents and the director's comments about them in the January 21, 2005, NOID, the AAO finds that there is no indication that the Form I-94 and the Delta Air Lines ticket, referred to by the director, are fraudulent. The director's decision to deny the application for fraud is therefore withdrawn.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before January 1, 1982 and resided continuously in the United States for the requisite period.

The following evidence relates to the requisite period:

Employment Letters

- A letter dated February 9, 1991, from [redacted] general manager of Houlihans's Restaurant on [redacted] Mr. [redacted] states that the applicant worked for the restaurant from December 1981, to November 1985, as a bus boy, setting up and cleaning tables, and being a general assistant in the kitchen. [redacted] attests that the applicant was paid in cash as he did not have a Social Security number;

- A letter dated simply December 16, (without an indication of the year) from [redacted] president of STS Drugs, Inc. [redacted] states that the applicant worked as a sales person in his store from January 1985, to October 1990. He states that the applicant's salary ranged from $3.35 to $5.00 per hour and that he was paid in cash as he did not have a Social Security number.

These letters can be given little evidentiary weight because they lack sufficient detail and information required by the regulations. Specifically, the employers failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employers also failed to declare which records their information

was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative, state the reason why such records are unavailable. In addition, the letter from [redacted] listed his position but did not list the applicant's duties. Finally, neither letter is signed under penalty of perjury.

Letters and Affidavits

- Two undated letters from [redacted] the applicant's former roommate and employer. [redacted] states that the applicant lived with him from November 1981, to December 1984. [redacted] states that the applicant shared monthly rent and other utility bills during the time he lived with him. He states that in January 1985, the applicant moved in with other friends and that he now lives in Florida. He states that the applicant always keeps in contact with the applicant over the phone. The letters contain no details regarding any relationship with the applicant during the requisite period and fail to state when or where the affiant and the applicant met. In both letters, [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 his address and the fact that he contributed towards monthly expenses. In addition, there is no evidence that [redacted] resided in the United States during the requisite period;

  A letter from [redacted] states that the applicant lived with him from January 1985, to October 1990. He states that the applicant shared the rent and other requisite bills on a monthly basis during the period he lived with him. Again, the letter contains no details regarding any relationship with the applicant during the requisite period and fails to state when or where the affiant and the applicant met. [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 his address and the fact that he contributed towards monthly expenses. In addition, there is no evidence that Mr. [redacted] resided in the United States during the stated period;

  A letter dated February 11, 1991, from [redacted] Dr. [redacted] states that the applicant is well known to him for the past ten years. He states that the applicant visited him in November 1981, while he was in Rochester, New York. He states that the applicant went to see him at his home several other times. [redacted] does not provide any details about his relationship with the applicant over a period of ten years. He does not describe how they met or how often they spoke or saw each other during those ten years. He has not submitted any documentation to establish that he resided in the United States during the requisite period. Furthermore, he provides no details or knowledge of the applicant's entry to the United States prior to January 1, 1982, or his continuous residence and physical presence during the requisite period;

- A letter dated February 15, 1991, from [redacted] Mr. [redacted] states that he applicant is well known to him since he arrived in the United States in November 1985. He states that during the previous five years in New York the applicant was very close to him and was often a visitor with his friends in his home. Again, [redacted] provides no details about his relationship with the applicant over a period of five years. He does not describe how they met or how often they spoke or saw each other during those years. He has not submitted any documentation to establish that he resided in the United States during the stated time period. Furthermore, he gives no indication about where the applicant lived from November 1985 to February 1991 or during the times that he visited him at his home;

- An "Affidavit of Witness" form dated February 14, 1991. The form, signed by [redacted] lists the applicant's addresses in New York from November 1981 through October 1990, and is consistent with information on the applicant's Form I-687. The form language states that the affiant has personal knowledge that the applicant has resided in the United States at the addresses listed. 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] did not add anything in this blank. This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period and fails to state when or where the affiants and the applicant met. [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 his addresses. In addition, there is no evidence that the affiant resided in the United States during the requisite period;

- An affidavit form dated February 14, 1991. The form, signed by [redacted] ~~Khan~~, allows the affiant to fill in statements about how and where he or she first met the alien, how often and under what circumstances he or she sees the applicant, each month and year he or she has seen the applicant, and, what activities, if any, they do together. [redacted] states that he met the applicant at the house of one of his dearest friends, where the applicant started to live. He states that he saw the applicant whenever he visited his friend. He states that he saw the applicant at his workplace, STS Drugs, as well. He states that he saw the applicant 2-3 times per month until October 1990, when the applicant moved to Florida. He states that he saw the applicant at various meetings, cultural, religious, and community programs, and social gatherings. [redacted] does not list the applicant's addresses during this time period. He also fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence from prior to January 1, 1982, to November 1985,

when he first met him. Furthermore, there is no evidence that [redacted] resided in the United States during the stated time period; and,

- A letter dated February 4, 1991, signed by [redacted] on letterhead stationary of the Bangladesh Cultural Center. [redacted] states that he has known the applicant since December 1981. He states that the applicant came to his house one month after his arrival in the United States. He states that during this 10 year period, the applicant was very close to him and visited his home several times. He states that the applicant is an associate member of the Cultural Center. Mr. [redacted] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his continuous residence and continuous physical presence during the requisite periods. Furthermore, there is no evidence that [redacted] resided in the United States during the stated time period.

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 the applicant has submitted numerous letters and 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. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiants' presence in the United States during the requisite period. In addition, none of the affiants indicated how they dated their acquaintance with the applicant.

Counsel asserts that that the letter from [redacted] contains his phone number and that there is no evidence that the Service attempted to contact [redacted]. As stated above, the facts provided by [redacted] in his letter were not detailed or specific enough to be probative of the applicant's entry to the United States prior to January 1, 1982, and of his required continuous residence and continuous physical presence. Therefore the interviewing officer's failure to contact [redacted] is not a sufficient basis to overturn the director's decision.

The record of proceedings contains various other documents, including tax documentation from the years 2001 to 2004 and a certificate of participation from the Bangladesh Cricket Association of New York dated August 14, 1994. None of this evidence addresses 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 last entered the United States on June 18, 1983, and to have resided for the duration of the requisite period in New York and Florida. 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.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, 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.