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U.S. Department of Homeland Security
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Washington, D.C. 20529

U.S. Citizenship and Immigration Services

L 2

[redacted]

FILE: [redacted] Office: NEW YORK Date: AUG 2 7 2008

MSC 01 296 60013

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. 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.

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

On appeal, counsel asserts that the applicant "entered US in 1980 and left United States on September 15, 1982 and reentered on October 20, 1982. The respondent has submitted several affidavits and job letter in response to the intent to deny. The respondent still relies on the documents."

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 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.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- Three envelopes postmarked on August 25, 1981, October 21, 1981 and March 11, 1983 and addressed to the applicant at [redacted] and [redacted] in Brooklyn, New York. The applicant also submitted several other envelopes; however, the postmarks on the envelopes were indecipherable.
- Notarized affidavit from [redacted] and [redacted] of Brooklyn, New York, who attested to the applicant's Brooklyn New York residences at [redacted] from June 1980 to June 1982 and at [redacted] from 1982 to April 1984. [redacted] asserted that the applicant would "come to me to get some advise [sic] how to get a job." [redacted] indicated that he met the applicant at a friend's apartment.
- A notarized affidavit from [redacted] of Brooklyn, New York, who indicated that he became acquainted with the applicant at a friend's party and attested to the applicant's Brooklyn New York residences at [redacted] from June 1980 to May 1982, at [redacted] from July 1982 to April 1984 and [redacted] from December 1987 to October 1990. The affiant also attested to the applicant's residence at [redacted], Bronx, New York from May 1984 to November 1987.
- Two notarized affidavits from [redacted] a general contractor in Brooklyn, New York, who indicated that the applicant was in his employ on a day-to-day basis as a painter/helper from 1981 to October 1988.

According to the interviewing officer's notes, the applicant claimed to have first entered the United States on April 13, 1980, and that he departed the United States on September 15, 1982 and reentered the United States on October 20, 1982 with a nonimmigrant visa. On several occasions, throughout the application process, the applicant was requested to provide evidence of his entry into the United States with a nonimmigrant visa. The applicant, however, failed to provide the requested evidence. The applicant subsequently indicated that he had no Form I-94, and no admission stamp in his passport and did not apply for a duplicate Form I-94 visa.[1]

The interviewing officer's notes also indicate that [redacted] was contacted in an effort to establish the veracity of the applicant's employment and [redacted] indicated that he did not issue the employment letter.

On October 24, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that he had not established by a preponderance of the evidence continuous residence in the United States since before January 1, 1982 through May 4, 1988. The applicant was further advised that Citizenship and Immigration Services (CIS) had contacted [redacted], and that [redacted] indicated that he did not issue the employment letter. The director advised the applicant that the employment letter had cast doubt on his claim

[1] The record reflects that on July 24, 2002, nine days after his LIFE interview, the applicant filed a Form I-102, Application for Replacement/Initial Nonimmigrant Arrival/Departure Document.

of continuous residence in the United States during the requisite period. The director determined that the remaining affidavits were not credible and were not corroborated by other evidence.

It is noted that the director also advised the applicant that the envelopes submitted "appeared to be franked in Bangladesh and received in a United Stated [sic] residence. Please note that Bangladesh did not begin to frank international mail until February 19, 1984."

When any decision will be based, in whole or in part, on derogatory evidence, such evidence *must* be incorporated into the record. Whatever resulted from such information whether it consisted of a telephone call, a letter, or even a specific memorandum relating in detail the salient points of the conversation, *must* be incorporated into the record of proceeding. A review of the record fails to support the director's finding. As such, the director's finding regarding the envelopes will be withdrawn.

The applicant, in response, reaffirmed his employment during the requisite period and asserted that he did not provide any fraudulent documentation to procure an immigration benefit. The applicant submitted:

- Notarized affidavits from [redacted] and [redacted] of Brooklyn, New York, who attested to the applicant's Brooklyn residence at [redacted] from January 1988 to October 1990. The affiants indicated that they have known the applicant from their native country, Bangladesh, and upon their entry into the United States they have continued their friendship with the applicant.
- A notarized affidavit purportedly from [redacted] attesting to the applicant's employment on a day-to-day basis from August 1981 to October 1988.
- A notarized affidavit from [redacted] of Brooklyn, New York, who attested to the applicant's Brooklyn New York residences at [redacted] from June 1980 to June 1982, at [redacted] from May 1982 to April 1984 and [redacted] from December 1987 to October 1990. The affiant also attested to the applicant's residence at [redacted] Bronx, New York from May 1984 to November 1987. The affiant asserted that he has known the applicant from their native country, Bangladesh and "have always been together from the time we were in the US."

The director, in denying the application, noted that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and to have resided continuously since that date through May 4, 1988. The director, noted, in pertinent part:

> The information submitted is deficient to overcome the grounds for denial. In the statements, it is clear that the affiants are making an overt attempt to change certain events and circumstance after the fact in an apparent effort to explain away many of the inconsistencies and questionable evidence uncovered during our review and noted in the NOID. Furthermore, the affiants failed to include where the information comes from and failed to establish if the Service have access to any records if they are available.

On appeal, the applicant reaffirms the veracity of his entry into the United States prior to January 1, 1982 and his continuous residence since that date through May 4, 1988.

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 and counsel 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. The affidavits from [redacted] and [redacted] may only serve to establish the applicant's residence in the United States since January 1988.
2. None of the affiants provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.
3. [redacted] indicated to CIS that he did not issue the employment letter which attested to the applicant's employment during the requisite period. The applicant, however, has presented a letter purportedly from the affiant reaffirming the applicant's employment that had been discredited. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from [redacted] has been submitted to resolve the contradicting statements. As such, the affidavit submitted in response to the Notice of Intent to Deny has no probative value or evidentiary weight. The applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States during the requisite period.
4. Assuming, arguendo, [redacted] provided the affidavit submitted in response to the Notice of Intent to Deny, the affidavit still would have little probative value or evidentiary weight as it does not meet the regulatory requirements outlined in 8 C.F.R. § 245a.2(d)(3)(i). The affiant failed to include the applicant's address at the time of employment. Under the same regulations, the 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.

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 (5th 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, along with the applicant's reliance on affidavits which do not meet basic standards of probative value and are of

questionable veracity, it is concluded 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.