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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JUL 22 2008
consolidated herein]
MSC 01 317 60923

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 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

On appeal, the applicant submits additional documentation.

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).

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 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 (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.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit. While affidavits "may" be accepted (as "other relevant documentation') [*See* 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's unlawful continuous residence during the requisite time period.

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 from churches, should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the 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 the information being attested to.

The record reveals that the applicant, a native and citizen of Bangladesh, claims to have initially entered the United States as a nonimmigrant visitor in March 1981. He further claims to have departed the United States on only one occasion – from August 10, 1983, to September 10, 1983 – having returned on a nonimmigrant business visa. The applicant claims to have lost the passport he used for these entries and provides a letter from the Consulate General of Bangladesh in New York, dated June 18, 1991, to support this claim.

In a Notice of Intent to Deny (NOID), dated May 3, 2006, the district director determined that the applicant had failed to submit sufficient evidence to establish by a preponderance of the evidence that he actually took up residence in the United States on or before January 1, 1982. In a Notice of Denial (NOD), dated June 13, 2006, the district director denied the application based on the reasons stated in the NOID.

A review of the record reveals that the applicant has provided the following documentation throughout the application process in an attempt to demonstrate his entry into the United States before January 1, 1982, and his continuous residence in an unlawful status since that date through May 4, 1988:

1. An affidavit from [redacted], of Westwood, New Jersey, dated February 8, 1991, stating that he hired the applicant (on unspecified dates) as a delivery man when managing Bubba's Deli in Greenwich Village (no location provided), and that he knows the applicant resided in New York, New York, from September 1981 to

February 1984. Mr. [redacted] further attests that the longest period he has not seen the applicant is "2 years."

2. A letter from [redacted], secretary of the Islamic Council of America, Inc., New York, New York, dated February 21, 1990, stating that the applicant "used to come in every Friday for JUMMA PRAYER in Medina Mosque...every week since 1981."

3. An undated letter from [redacted] president of the Bangladeshi People's Association of America in Astoria, New York, stating that the applicant "has been discharging duties of our cultural Secretary since 1981."

4. A letter, dated February 20, 1990, from [redacted], of Brooklyn, New York, stating that he has known the applicant since 1981, and that the applicant shared apartment # [redacted] at [redacted], Brooklyn, New York, with [redacted] until July 1983, and that the applicant shared apartment # [redacted] at that address with [redacted] from September 1983 until early 1990.

5. Photocopies of leases signed by [redacted] (tenant) for the period June 15, 1981, through June 14, 1983; and from [redacted] (tenant) for the period July 30, 1983, through July 29, 1985 – on which [redacted] is shown as the landlord.

6. A letter from [redacted], dated June 21, 1991, stating that he has known the applicant since March 1981, and that the applicant lived with him at apartment # [redacted] at the [redacted] address until July 1983, and with [redacted] at apartment [redacted] same address) from September 1983 until early February 1990.

7. A photocopy of a rent receipt issued to [redacted] for the period May 15, 1981 to July 15, 1981, showing a payment of $270.00 for apartment # [redacted] at the [redacted] address.

8. Photocopies of envelopes mailed to the applicant in the United States at 568 [redacted] Brooklyn, New York, from [redacted] in Bangaldesh, postmarked August 8, 1981 and May 29, 1987.

9. Letters from [redacted], of [redacted], Brooklyn, New York, dated August 18, 1990, and July 1, 2006, stating that the applicant resided on [redacted] in Brooklyn, New York, since 1981.

10. Letters from [redacted] of Brooklyn, New York, dated May 17, 2006, and July 5, 2006, stating that he is acquainted with the applicant as a neighbor and that the applicant resided in Brooklyn, New York from March 1981 to October 1990.

The issue in this proceeding is whether the applicant has established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

The employment letter from Mr. [redacted] No. 1, above, does not comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F). Nos. 5 and 7, above, do not directly relate to the applicant, and therefore provide no evidentiary value. The affidavits provided in Nos. 2, 3, 4, 6, 9, and 10 are generally vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant during the requisite period, and lack details that would lend credibility to their claims of having direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. No. 8 simply shows that the applicant was in the United States in or about August 1981 (possibly while in the United States in valid status on a nonimmigrant visa) and May 1987.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided any documentation [such as money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence (other than the photocopies of the envelopes noted in No. 8, above) a Social Security card, or automobile, contract, and insurance documentation] according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K), dated during the relevant time period. The documentation provided by the applicant consists primarily of third-party affidavits ("other relevant documentation"). As previously discussed, these documents lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from 1982 through 1988. The applicant also has provided no documentation regarding his claimed nonimmigrant entries into the United States in March 1981 and September 1983.

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).

Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 insufficiency in the evidence provided, the AAO determines 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

since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.