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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEWARK (CHERRY HILL) Date: JUL 30 2008

MSC 02 316 60382

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, Newark, New Jersey (Cherry Hill Sub-Office), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant failed to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant submits a brief statement and 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.

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). *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 past employment should be on employer letterhead stationery, if the employer has such stationery, 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 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 member ship 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 applicant, a native and citizen of Bangladesh, submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), on October 10, 1990. The applicant claimed to have entered the United States without inspection on February 4, 1981, and to have departed and returned to the United States (again without inspection) on only one occasion - from June 11, 1987, to July 19, 1987 - in order to visit his mother in Bangladesh who was seriously ill.

In support of the Form I-687, the applicant submitted: several affidavits from acquaintances (Pear [redacted] attesting to their knowledge of the applicant presence in the United States since 1981; letters from [redacted] attesting to the applicant's employment in the United States from June 1981 to May 1990; and, a letter from the Islamic Council of America, Inc., stating that the applicant had been a member of the organization since November 1981. The affidavits from [redacted], do not provide details as to the affiants' knowledge of the applicant's entry, how they dated their acquaintances with the applicant, how often they had contact with the applicant, or any other details that would lend credibility to their having direct and personal knowledge of the events and circumstances of the applicant's residence in the United States during the relevant period. As such, the affidavits afford minimal weight as evidence of the applicant's residence and presence in the United States during the relevant period. The employment letters do not comply with the regulation

at 8 C.F.R. § 245a.2(d)(3)(i) in that they do not provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff, and 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 letter from the Islamic Council of America, Inc., also does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v), in that it does not state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letterhead stationery; establish how the author knows the applicant; and establish the origin of the information being attested to.

The applicant also submitted envelopes from Bangladesh addressed to him at [redacted], stamped postage paid on July 15, 1981, April 17, 1982, December 17, 1983, August 14, 1984, and October 15, 1985.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, under Section 1104 of the LIFE Act on August 12, 2002.

In a Request for Evidence (RFE) dated October 22, 2003, the applicant was requested to submit evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. On December 1, 2003, the applicant responded by resubmitting photocopies of documentation previously provided and by submitting the following additional documentation: a second letter from [redacted] dated October 23, 2003, stating that the applicant had been employed by Hashem Contracting Corp. from "June 1981 to 1985;" a letter from [redacted] stating that he worked with the applicant at [redacted] General Construction since 1984 to 1985;" a second affidavit from [redacted] dated October 29, 2003; a letter from [redacted] stating that the applicant visited her at her home in New Jersey while living in New York from February 10, 1982 to 1990; a letter from Browns Mills Dental Center, dated November 10, 2003, stating that the applicant had received dental treatment "during the years 1983, 1984, 1985, and 1988;" and, a letter from [redacted] stating that he has known the applicant since July 1981 and first met him at the Islamic Center in New York. Again, none of the affiants provide details as to their knowledge of the applicant's entry, how they date their acquaintances with the applicant, how often they had contact with the applicant, or any other details that would lend credibility to their having direct and personal knowledge of the events and circumstances of the applicant's residence in the United States during the relevant period, and the employment letter does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i).

In a Notice of Intent to Deny (NOID) the Form I-485, dated January 13, 2005, the district director noted that the envelopes previously provided by the applicant had been brought to the attention of the United States Consulate in Dacca, Bangladesh, to verify their authenticity, and that the Consulate had reported that the postage stamps on each of the envelopes were counterfeit. The applicant was afforded 30 days in which to provide a response.

On August 5, 2005, the applicant filed a Form I-601, Application for Waiver of Ground of Inadmissibility. In Part 10 of that Form, the applicant indicated that he was applying for the waiver due to "Material Misrepresentation."

In a Notice of Decision (NOD), dated June 17, 2006, the district director denied the application, based on the applicant's failure to submit a rebuttal in response to the NOID. On June 17, 2006, the district director also issued a NOID regarding the applicant's Form I-601. No final decision on the Form I-601 is contained in the record.

In an appeal filed on July 17, 2006, counsel states, in part, that "...[I]n response to an {RFE}client submitted an affidavit from his natural mother and also an original birth certificate (copy enclosed). The American Embassy in Dhaka, Bangladesh identified these documents as 'counterfeit.' It is a well known fact that there is rampant corruption that exists at that level. Innocent applicants are denied their rights unless they pay for it. Our client is a victim. The documents initially submitted were 'original' documents with no evidence of them being 'counterfeit.'..."

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).

On appeal, counsel has not addressed the issue of the counterfeit postage stamps on the envelopes submitted by the applicant. Nor does he explain why a Form I-601 was filed if, in fact, none of the documentation provided by the applicant constituted a material misrepresentation.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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, 591-92 (BIA 1988).

The AAO concludes that the applicant has not met his burden of proof. He 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.

Finally, it is noted that, under alien registration file number A98 481 898, the applicant is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker (EAC 04 081 51927 relates). A Form I-485 filed in connection with that application on August 6, 2004 (EAC 04 234 52276 relates), remains pending.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.