U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: MAY 06 2008
MSC 02 117 61090

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 [or Records] 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.

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 sustained.

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 has met the statutory burden of proof for establishing his presence in the United States during the requisite period.

An applicant for permanent resident status 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. 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).

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

- Several envelopes postmarked November 18, 1981, October 14, 1982, June 7, 1984, and May 13, 1985, and addressed to the applicant at [redacted], Bronx, New York.

- An envelope postmarked June 4, 1986, and addressed to the applicant at [redacted] Queens, New York.
- A letter dated April 16, 1991, from [redacted], secretary for the Muslim Community Center of Brooklyn, Inc., who indicated that the applicant has been participating in Friday congregations from 1983 to October 1990.
- A notarized affidavit from [redacted] of Brooklyn, New York, who indicated to have known the applicant since 1981. The affiant asserted that he visited the applicant at his residence, [redacted], Bronx, New York, on several occasions during 1981 to 1986.
- **A notarized affidavit from** [redacted] of Palm Beach, Florida, who indicated to have known the applicant since 1984, and that he has participated in many ceremonies with the applicant since that time.
- A notarized affidavit from [redacted] of Palm Beach, Florida, who indicated to have met the applicant through a friend in 1986 in Bronx, New York. The affiant asserted that he had seen the applicant several times a year at religious activities and social functions since that time.
- A letter dated April 10, 1991, from [redacted], manager of Arizona Fried Chicken in Bronx, New York, who indicted the applicant was employed as a sales person and cashier from January 1982 to December 1989.
- A notarized affidavit from [redacted] of New York, New York, who indicated that the applicant resided with him at [redacted]5, New York, New York from November 1987 to October 1990. The affiant asserted that the lease was in his name.
- A notarized affidavit from [redacted] of New York, New York, who indicated that the applicant resided with him at [redacted], Flushing (Queens), New York from April 1986 to October 1987, subsequent to his move from Union Port Street.
- **A letter dated October 31, 2001, from Imam** [redacted], president of Al Hera Islamic Institute Inc., who indicated that has personally known the applicant since 1980 and that the applicant is a member of the institute.

In response to the Notice of Intent to Deny issued on March 29, 2006, counsel submitted:

- A notarized affidavit from [redacted] who indicated the applicant "is personally known to me since December 1996 and I had met him first time in April 1981 in a Bangladesh community gathering...."
- A notarized affidavit from [redacted] of Lawrenceville, New Jersey, who indicated that the applicant was a former student in Bangladesh and attested to the applicant continuous residence in the Untied States during the requisite period. The affiant asserted that the applicant "came to my residence in several birthday occasions of my sons and daughter."
- A notarized affidavit from [redacted] of Brooklyn, New York, who indicated to have known the applicant since August 1981 through religious activities and attested to the applicant's continuous residence in the United States since that time.

On appeal, counsel submits an affidavit from the applicant who reasserted the veracity of his claim to have entered the United States in April 1981 and to have continuously resided since that time in the United States. Counsel also submits copies of a New York driver license and United States passports belonging to some of the affiants.

The regulation at 8 C.F.R. § 245a.12(e) specifies that the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. There is no evidence in the record to suggest that any of the affidavits were not susceptible to independent verification. The affidavits were verifiable as they were accompanied by the affiants' phone numbers and/or addresses. The AAO views the affidavits as credible, uncontradicted by other evidence in the record, and sufficiently detailed to establish, in conjunction with the applicant's personal declaration, that the applicant entered the United States in January 1981 and continuously resided in the United States through May 4, 1988.

The fact that the employment letter did not meet *all* of the regulatory requirements is immaterial in the determination of whether the testimony contained in the letter is credible and probative to the applicant's employment. Again, such letter must be considered in light of the other supporting evidence and the applicant's own testimony with a determination being made based upon the totality of the circumstances.

In this instance, the applicant submitted evidence, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.