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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: MAY 23 2008

MSC 02 114 61205

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 on appeal before the Administrative Appeals Office (AAO). 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 for the applicant submits a brief 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 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 district 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.

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.

While there is no specific regulation that governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation 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 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 record reflects that in or about August 1991, the applicant submitted a Form I-687, Application for Temporary Residence (Under Section 245A of the Immigration and Nationality Act) pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.,* CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 CSS/Newman Settlement Agreements). On the application the applicant indicated that he had entered the United States without inspection at Buffalo, New York, in May 1981 and had only been absent from the United States on one occasion – from November 20, 1987 to December 18, 1987 – when his presence in Bangladesh was essential because his ex-wife was very ill and hospitalized. On the application he also indicated that he had a son, Tanim Ahmed Fahmid, born in Bangladesh on October 4, 1988.

In support of the Form I-687, the applicant submitted several affidavits from acquaintances attesting to their knowledge of the applicant having been present in the United States since on or after May 1981. While not required, the affidavits were not accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. The affiants were vague as to how they dated their acquaintances with the applicant, how often and under

what circumstances they had contact with the applicant during the requisite period, and generally lacked details that would lend credibility to their claims. The applicant also submitted an airline ticket issued to him in New York on November 5, 1987, for travel from New York on November 20, 1987, to Chittacong, Bangladesh (via London and Dhaka), returning from Chittacong on December 17, 1987. The applicant additionally provided a letter from the Consulate General of Bangladesh in New York, dated August 6, 1991, stating that the applicant's passport (issued in 1980 and expiring in 1990) had been lost.

The applicant filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on January 22, 2002.

On June 15, 2004, the applicant was interviewed, under oath, in connection with his Form I-485. At interview, the applicant claimed that when he initially flew to Canada from Bangladesh, he did not need a visa to enter Canada, was driven to the U.S. border where he walked across, was picked up by someone on the U.S. side and driven to New York. He also stated that he had reentered the United States at New York on December 20, 1987, by using a photo-substituted "visa" issued to another person. He further stated that his ex-wife, [redacted] had never been in the United States (they were divorced in 1991 and the applicant remarried in 1993).

On September 26, 2005, the district director issued a Notice of Intent to Deny (NOID), stating that the applicant had provided no primary physical evidence to support his assertion of having been physically present in the United States prior to January 1, 1982, and that the only primary evidence provided to establish his physical presence from January 1, 1982 to May 4, 1988, was the airline ticket issued to him in New York in 1987. The district director also noted that the only evidence alleging the applicant's presence in the United States prior to 1987 was affidavits, most of which did not provide a phone number for verification, or the phone number provided was no longer in service. The district director specifically noted that attempts to contact one of the affiants, A[redacted] who had stated that the applicant lived with him and was employed by him since early 1981, were unsuccessful.

Finally, the district director stated that the applicant's claims regarding his trip to Bangladesh in 1987 lacked credibility in that he had a son born 10 months after his alleged departure from Bangladesh, meaning that his ex-wife became pregnant while she was so ill that she required hospitalization. The applicant was provided 30 days in which to submit any evidence he wished to be considered in making a final decision in his case.

In response, the applicant provided death certificates for two of the previous affiants, [redacted] and [redacted] thereby explaining why attempts to verify their statements had been unsuccessful. The applicant also resubmitted an affidavit from [redacted], dated August 19, 1991 (initially submitted in support of his Form I-687), and a new affidavit, notarized on June 12, 2004, from [redacted], of Brooklyn, New York, stating that he had "personally and very closely" known the applicant since he (the applicant) first came to the United States in May 1981.

The district director denied the application on July 20, 2006, after concluding that the documentation submitted was insufficient to overcome the grounds for denial. The district director specifically noted that the applicant had made no attempt to address the inconsistencies regarding his alleged one-month trip to Bangladesh in 1987.

On appeal, counsel provides a brief quoting the director's decision, and asserting that the applicant "has been in this country for long without any criminal record." In support of the appeal, counsel submits new affidavits from the applicant's acquaintances attesting to their knowledge of the applicant's presence in the United States since on or after May 1981. On appeal, the applicant, has again failed to address the discrepancies noted regarding his visit to Bangladesh in 1987 to visit his very ill, hospitalized ex-wife, and his son's birth 10 months after his alleged return to the United States.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Furthermore, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 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 above-noted unexplained discrepancies 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).

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