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

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEW YORK Date: MAY 30 2008

MSC 02 211 64622

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.

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 on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982, through May 4, 1988.

The applicant provides a statement and additional documentation in support of the appeal.

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. Section 1104(c)(2)(B) 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 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 Citizenship and Immigration Services (CIS) 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. 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.

In an affidavit to determine class membership, which he signed under penalty of perjury on April 2, 1990, the applicant stated that he first arrived in the United States on April 12, 1981, when he crossed the border

without inspection. The a. . licant stated that he lived at [redacted] in New York from May 1981 to April 1987; at [redacted] in New York from June to October 1987; and at [redacted] in New York from November 1987 to December 1989. The applicant admitted to one absence from the United States during the qualifying period, from February to March 1987, when he traveled to Bangladesh to visit his sick mother. He stated that he returned to the United States pursuant to a B-2, visitor's visa. The applicant also stated that he worked for Shahbagh Restaurant in New York from May 1981 to November 1987, and at Worldwide Trading Company in New York from December 1987 to December 1989.

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

1. An undated notarized "affidavit of residence" from [redacted] in which he stated that the applicant lived with him at [redacted] in New York from July 1981 to April 1987, at [redacted] in Astoria, New York from June to October 1987, and at [redacted] in Chicago, Illinois from January to April 1990. Mr. [redacted] listed his current address as [redacted] in New York. The applicant submitted no documentation to verify that either he or Mr [redacted] lived at the given addresses during the stated time frames. The record contains a March 23, 1990, statement from [redacted], who stated that the applicant had lived with him at the [redacted] address since January 1990. While these dates are subsequent to the qualifying period, [redacted] statement, and the fact that [redacted] identifies his current address as the same in which he allegedly lived from 1981 to 1987, raises issues as to [redacted] credibility. The applicant submitted no documentation, such as utility bills or rental receipts, to verify that either he or [redacted] lived at the addresses indicated during the stated time frames.

2. A January 26, 2001, notarized "affidavit of residence" from [redacted], in which he stated that the applicant lived with him at [redacted] in New York from November 1987 to December 1989. Mr. [redacted] stated that the rent and household bills were in his name, but that the applicant contributed to household expenses. The applicant submitted no documentation to verify that either he or [redacted] lived at the given address during the time stated. Mr [redacted] did not list his current address or give a phone number.

3. A December 10, 1987, letter from Shahbagh Restaurant in New York, signed by [redacted] as manager. The letter certified that the applicant worked for the company as a waiter from May 1981 to November 1987.

4. An October 20, 1990, letter from Worldwide Trading, signed by [redacted] as manager. The letter certified that the applicant worked for the company on a part-time basis from December 1987 to December 1989.

5. A copy of the applicant's New York interim license/identification card, showing that it was issued on July 13, 1987. The applicant's address is shown as [redacted] in Astoria, New York.

6. A copy of the applicant's Bangladeshi passport, indicating that it was issued in New York on October 23, 1987.

The employment letters from the Shahbagh Restaurant and Worldwide Trading do not meet the requirements of 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 his employment, and do not indicate whether the information was taken from company records. Therefore, these letters are of no probative value in this proceeding.

In a Notice of Intent to Deny (NOID), the director advised the applicant that his evidence was insufficient to meet his burden of proof under the LIFE Act. In response, the applicant submitted the following additional documentation:

7. A June 22, 2006, affidavit from [redacted] in which he stated that he had known the applicant since October 1981. Mr. [redacted] did not provide any information on the circumstances surrounding his initial acquaintance with the applicant or how he dated his relationship with him. The affiant stated that to the best of his knowledge, the applicant had lived in the United States since 1981. However, during a July 20, 2006, telephonic inquiry with the district office, the affiant could not provide further information about the applicant's residence during the qualifying period.

8. A June 23, 2006, affidavit from [redacted], in which he stated that he had known the applicant since July 1981, and that they used to see each other at social gatherings. The affiant did not provide information about his initial acquaintance with the applicant or how he dated his relationship with the applicant. The district office was unable to verify the information provided by the affiant.

9. Copies of medical records from New England Medical Center, Washington Street in Boston, Massachusetts, showing that the applicant was treated on March 16, 1987.

10. A letter from the Commonwealth of Massachusetts, Registry of Motor Vehicles, indicating that the applicant was issued a driver's license on March 23, 1987. The letter appears to be a copy of another document that has been photocopied onto the Registry of Motor Vehicles letterhead. The document does not include an address for the applicant.

The applicant claimed to have lived in New York; however, he submitted documentation indicating that he received medical treatment in Boston and also had a Massachusetts driver's license. On appeal, the applicant states that he flew into Boston from Bangladesh on March 16, 1987, and stayed overnight in the airport lounge before checking into the Hilton Hotel later that morning. The applicant states that he became ill and went to the New England Medical Center for treatment. He also stated that during that time, he also went to the Department of Motor Vehicles and applied for a Massachusetts driver's license.

While the applicant's explanation of his actions following his arrival in the United States in March 1987, fits the evidence that he provided, it doesn't adequately explain the circumstances surrounding the evidence. For example, the applicant claimed to live in New York during this time frame. However, his flight took him into Boston, where, rather than continuing his journey to New York, he checked into the Hilton Hotel and remained in Boston until at least March 23, when he applied for and received a Massachusetts driver's license. Additionally, the applicant does not explain how he was issued a Massachusetts license without supplying the Registry of Motor Vehicles with a Massachusetts address. The applicant did not claim to have lived in Boston at any time during the qualifying period. We note that the driver's record purportedly issued to the applicant does not contain a current address for the applicant

or one that existed at the time he received his license. The applicant provides no information as to how he was able to fulfill the requirements for receiving a Massachusetts driver's license in seven days.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On appeal, the applicant also submits an August 5, 2006, affidavit from [redacted], in which he stated that he has known the applicant since 1981. The affiant provided no information on the circumstances surrounding his initial acquaintance with the applicant or how he dated his relationship with him.

Pursuant to 8 C.F.R. § 245a.12(e), 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 applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, 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.