U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: NOV 03 2008

MSC 02 245 63364

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.

for 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 Director, New York, New York, and is now before the Administrative Appeals Office (AAO) 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 from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the applicant testified under oath that the documents submitted were bonafide and credible. Counsel asserts that the applicant submitted sufficient documentation establishing continuous residence in the United States during the requisite period. Counsel argues that the immigration officer made errors in considering all the documents in the application and thus the application demands further review.

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. Section 1104(c)(2)(B)(i) 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 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).

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

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

- A document dated December 8, 1981, from State University of New York, which indicates that the applicant participated in a Vision Screening sponsored by the SUNY College of Optometry and WCBS-TV.
- A notarized affidavit from of Long Island City, New York, who attested to the applicant's residence in Bronx, New York from October 1982 to November 1989. The affiant asserted that the applicant was residing "with a mutual friend to whom I rented an apartment to."
- A letter dated August 5, 1990, from , secretary of Islamic Council of America, Inc., in New York, New York, who indicated that the applicant has visited the mosque "most every Friday since December 1981."
- An envelope postmarked June 14, 1983, and addressed to , Bronx, New York. Two other envelopes were submitted; however, the postmarks are indecipherable.
- A letter dated December 3, 1983, from , proprietor of Nupur Indian Restaurant in New York, New York, who indicated that the applicant was in his employ as a cleaner and stock boy from December 1981 to November 1983. The affiant attested to the applicant's absence from September 1982 to mid October 1982.
- A letter dated March 28, 2002, from , general manager of Hot & Crusty, who indicated that the applicant was employed at this entity from April 1987 to October 1989. The affiant indicated that the applicant resided at Bronx, New York during his employment.
- A photocopied letter dated May 23, 1991, from , owner of Landmark Travel in New York, New York, who indicated that the applicant had purchased a return ticket on Trans World Airlines traveling from John F. Kennedy International Airport on September 6, 1982 and returning on October 10, 1982.
- A letter dated August 16, 1989 from of General Contracting Co., in Brooklyn, New York, who indicated that the applicant was in his employ as a laborer from November 1985 to December 1986.
- A notarized affidavit from of Flushing, New York, who attested to the applicant's residence in the United States since November 1981. The affiant based his knowledge on the applicant calling him "at that time upon his arrival in U.S.A." The affiant asserted that the applicant returned to Bangladesh in September 1982 due to "father's serious ailment."
- A letter dated January 30, 2002, from , general secretary of Bangladesh Society Inc., New York, who indicated that the applicant was a member of its organization from January 1982 to December 1985.
- An international money order dated June 18, 1984.

At the time of his LIFE interview on March 17, 2004, the applicant indicated that he entered without inspection into the United States in December 1981 from the Bahamas by using his brother's passport and he worked in an Indian Restaurant from December 1981 through November 1983 in Jackson Heights, New York.

On April 23, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that he had not provided any evidence of probative value to substantiate his residence during the requisite period. The affidavits submitted appeared to be neither credible nor amenable to verification as no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was also advised of his testimony taken at the time of his interview. The director determined that the applicant was inadmissible under section 212(a)(6)(C)((i) of the Immigration and Nationality Act.

The applicant, in response, submitted [redacted]'s letter in its original format and asserted, in pertinent part:

> In my interview I never mentioned that I entered in the US in December, 1981 through Bahamas using my brother's passport. Rather I said, that was my own passport. It did not require any prior acquired visa to enter in the Bahamas, only at the port of entry, as Bahamas has the status of Commonwealth country like Bangladesh.
>
> You have given a citation of section 212(a)(6)(c){I} of the Immigration and Nationality Act which is not appropriate in this respect because of the fact that I procured a visa from the US embassy in Dhaka in Bangladesh though with the help of other people.
>
> In my statement I did not mention that I worked in a restaurant in Jackson Height. Fact is I worked in a restaurant in Manhattan which was corroborated with a document that might be found in the file. What I states was, I worked in Jackson Height as a helper of a street Vendor.
>
> You have mentioned that I failed to furnish the document of employment records, utility bills or medical bills/receipts. Again I respectfully disagree. I submitted purchase receipt, testimonial of the owner of the restaurant that supported my employment status, an eye exam report. About the affidavits, the person who had given a sworn testimonial is a citizen of the United States of America since long (citizenship number was mentioned there). His residence address and phone number was given by which he can be contacted. I could not submit any utility bill because of the fact that I was an undocumented alien that disallow me to have utility connection of my own.

The director, in denying the application, on May 26, 2007, determined that the information and documentation submitted were insufficient to overcome the grounds for denial.

The statements of counsel and the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988.

The document from State University of New York has no probative value as it was not signed by an official of either the University or WCBS-TV.

The employment letters from [redacted] and [redacted] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same

regulations, the letters including failed to 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 applicant has not provided any evidence to substantiate his claim that he was issued a visa on September 28, 1982, from the United States Embassy in Dhaka, Bangladesh.

On his Form I-687 application signed January 20, 1990, the applicant indicated that he has never been married. However, along with his LIFE application, the applicant submitted documentation establishing that he was married in Bangladesh on September 19, 1982.

The letters from [redacted] and [redacted] have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiants do not explain the origin of the information to which they attest. Furthermore, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

and failed to provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence during the requisite period seriously detracts from the credibility of his claim

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 (BIA 1988).

The evaluation of the applicant's claim is a factor on both the quality and quantity of the evidence provided. While affidavits in certain cases can effectively meet the preponderance of evidence standard, the affidavits submitted by the applicant are lacking in probative value and evidentiary weight and, therefore, 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 from before January 1, 1982, through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.