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

[redacted]

FILE: [redacted] Office: GARDEN CITY Date: FEB 25 2009

MSC 01 359 62797

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.

for John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient evidence to establish the requisite continuous residence. Counsel submits additional evidence on appeal.

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 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.

In the Notice of Intent to Deny (NOID), dated October 29, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant failed to submit credible evidence to establish his continuous residence. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated December 2, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant failed to submit additional evidence in response to the NOID.

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. The applicant submitted evidence, including letters and affidavits as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Employment Letters

1. The applicant submitted a letter of employment, from [redacted], Manager of [redacted] and [redacted], located at [redacted] Woodside, New York, N.Y. 11373, dated September 12, 1989. Mr. [redacted] states that the applicant had been employed as a sales and Deliman from July 1982 to January 1984.

2. The applicant submitted a letter of employment, from [redacted] Manager of [redacted] (trading as [redacted], located at [redacted] Brooklyn, N.Y. 11236, dated September 11, 1989. Mr. [redacted] states that the applicant had been employed as a Helper/Cleaner from March 1984 to May 1986.

It is noted however, that the letters failed to provide the applicant's address at the time of employment. Also the letters failed to show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). These letters, are therefore, not probative as they do not conform to the regulatory requirements.

The applicant provided an affidavit from [redacted] stating that he has known the applicant to have resided in the United States since May 1981. Mr. [redacted] states that the applicant is his friend. However, the affiant does not provide details as to how he dates his acquaintance with the applicant, and, whether and how frequently he had contact with the applicant during these years.

The applicant also submitted a Declaration of Domicile, dated August 19, 1991. The declaration states that a "Green Card #: was issued on December 10, 1981. As there is no such document as a [redacted]Green Card, this information is clearly misleading as it infers that such a document had been issued in 1981. The declaration, therefore, is not probative as to the applicant's residence during the requisite period.

In addition, the applicant submitted the following additional documents:

1. A letter from the Consulate General of Bangladesh, pertaining to issuance of a passport on August 5, 1989.

2. An Apartment Lease, dated October 28, 1990.

3. Two letters of employment, from [redacted] Proprietor, of [redacted] Restaurant, and from [redacted] of [redacted]. The letters pertain to the applicant's employment in 1989, and 1990, respectively.

None of these documents relate to the requisite period beginning prior to January 1, 1982, and the applicant has not provided any other evidence of residence in the United States during the duration of the requisite period. Given that none of these documents relate to the period from before January 1, 1982 through April 30, 1982, this evidence as a whole does not establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

The applicant has not submitted any additional evidence in support of his claim that he entered the United States prior to January 1, 1982, and he had resided continuously in the United States during the entire requisite period.

It is also noted the applicant has not provided any reliable documents, such as reliable employment records. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 from prior to January 1, 1982, through May 4, 1988.

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.