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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 245 60487

Office: NEW YORK

Date: SEP 03 2009

IN RE:

Applicant:

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:

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.

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 District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the applicant submitted ample documents and statements to the United States Citizenship and Immigration Services (USCIS). Counsel also states that the affidavit from [REDACTED] has probative value and should be considered. Counsel asserts that in regard to the affidavit from [REDACTED] additional evidence has been provided with the 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 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.* at 80. 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 petitioner 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, 431 (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 the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of letters and affidavits of relationship written by friends, a letter signed by [REDACTED] president of the Bangladesh Youth Association Inc., a letter from [REDACTED] president of the Islamic Council of America, Inc., a letter from his previous employer and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility.

The USCIS adjudication officer's notes during the applicant's Form I-687 application interview and the applicant's class membership determination form reveal that the applicant claims to have entered the United States without inspection in September, 1981.

The applicant submitted declarations and letters from friends to establish his initial entry and residence in the United States during the requisite period. In an undated declaration [REDACTED] states that he neither knows how the applicant entered the United States nor when he met the applicant but he was told the applicant came to the United States before 1982. In another notarized declaration, [REDACTED] contradicts himself by stating that he first met the applicant through a friend when the applicant visited his house in September 1981. [REDACTED] states that the applicant later moved into his house and that they attended the mosque together to do daily prayers. In his notarized letter, [REDACTED] states that the applicant has been living at [REDACTED], New York, from September 1981 to June 1987 and he is an excellent tenant and always paid his rent on time.

[REDACTED] states in his letter that the applicant has been living at [REDACTED] Brooklyn, New York, from August 1987. He states he was an excellent tenant but does not give any other information about the applicant. In another declaration, [REDACTED] states that he met the applicant when he came with a friend to rent an apartment. Since moving into his house, [REDACTED] states that they usually go to park and play soccer or basketball.

Upon review, the AAO finds that the declarations and letter lack the detail required to establish their credibility. The declarations and letter do not include sufficient detailed information about the

claimed relationship and the applicant's unlawful entry prior to January 1, 1982 and continuous residency in the United States throughout the requisite period. The witnesses fail to give other details that would lend credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The declarations and letter do not provide concrete information, specific to the applicant and generated by the asserted association with him, which would reflect and corroborate the extent of this association and demonstrate that the witnesses had a sufficient basis for reliable knowledge about the applicant during the time addressed in their statements. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Therefore, the statements will be given nominal weight.

The letter signed by [REDACTED] owner of the Bonani Restaurant, Inc. states that the applicant was employed as a bus person from August 1981 to March 1986. This contradicts the applicant's claim to have entered the United States in September 1981. Further, 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. As the letter does not meet the requirements stipulated in the aforementioned regulation and conflicts with other evidence of record, it will be given nominal weight.

The applicant provided letters signed by [REDACTED] president of the Bangladesh Youth Association Inc., and [REDACTED], president of the Islamic Council of America, Inc. In the letter dated May 12, 1992 the president of the Islamic Council of America, [REDACTED] states that the applicant has been known to [REDACTED] for a long time, that the applicant occasionally performs his prayers in the mosque and according to his passport, his birthday is October 7, 1962. The letter dated April 12, 1992 and signed by the president, [REDACTED], states that the applicant has been a member of the Bangladesh Youth Association, Inc. since 1989. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letters signed by [REDACTED] and [REDACTED] do not contain most of the aforementioned requirements and therefore will be given nominal weight. Further, the

applicant's association with the Bangladesh Youth Association, Inc. is not relevant to the requisite period.

The remaining evidence consists of four store receipts and the customer copies of four money orders. The four store receipts show only cash transactions that were made in July, 1986. The customer copies of the four money orders dated May 5, 1982, November 17, 1983, November 7, 1984 and May 8, 1985 do not bear the applicant's name and address. Absent the applicant's name and address on these documents, they are not probative of the applicant's residence in the United States.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). Considering all the evidence of record, the AAO finds that the applicant has not established that he entered the United States prior to January 1, 1982 and resided in the United States for the requisite period. Given the lack of detail in the declarations and the letter and the inconsistencies in the information given in [REDACTED] declarations, the applicant has failed to submit sufficient evidence to overcome the director's denial. The evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period 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.