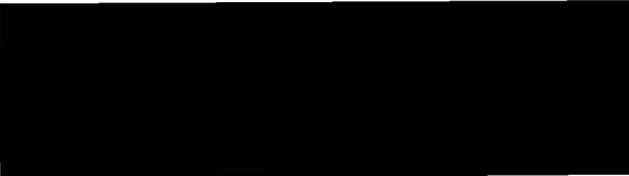


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FILE: [Redacted]
MSC 03 196 61339

Office: LOS ANGELES

Date: **APR 11 2008**

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 [or Records] 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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel contends that the applicant has submitted sufficient evidence to demonstrate his entry into the United States before January 1, 1982, and continuous unlawful residence in the United States since that time.

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 or 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).

In the Notice of Intent to Deny (NOID), dated on April 15, 2006, the director stated that the applicant failed to submit evidence demonstrating his entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In a rebuttal to the NOID, dated May 15, 2006, counsel asserted that the applicant complied with all the requirements for adjustment of status. Specifically, counsel asserted that the applicant entered the United States before January 1, 1982, and continuously resided in an unlawful status through May 4, 1988. Counsel contended that the applicant submitted various affidavits to establish his claim. He provided no new evidence on rebuttal.

In the Notice of Decision, dated May 25, 2006, the director stated that affidavits may be used to establish continuous residence in cases where the applicant has already proven initial entrance. The director determined that the applicant failed to submit documentation establishing his entry into the United States before January 1, 1982, as well as credible documentation of his continuous unlawful residence during the requisite period. The director denied the instant applicant based on the reasons stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

The record includes the following relevant evidence:

1. A March 21, 2003, affidavit by [REDACTED] who stated that he has known the applicant since 1982 in Los Angeles, California. The affiant stated that applicant currently resides at [REDACTED], Los Angeles, CA, 90004. The affiant provided his address of residence and telephone number. The affiant did not date his acquaintance with the applicant prior to January 1, 1982. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to indicate how he met the applicant, how frequently he saw the applicant, or the applicant's place of residence during the requisite period. 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 the affiant.

2. A March 21, 2003, sworn affidavit by [REDACTED] who stated that he has known the applicant since the middle of 1981. The affiant stated that he first met the applicant in the Bangladesh Association of California picnic of Los Angeles, where the applicant was a volunteer. The affiant provided his address of residence and telephone number. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant also failed to indicate the applicant's place of residence during the requisite period. It is further noted that the record includes a Form I-687, Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act, signed by the applicant. In his Form I-687, at Question # 34, the applicant was asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc. The applicant failed to list that he was affiliated with the Bangladesh Association of California in Los Angeles. This discrepancy casts doubt on the credibility of the affiant.
3. A rent receipt, dated February 4, 1985, in the applicant's name and [REDACTED]. The address on the receipt is [REDACTED], Los Angeles, California 90020. The amount of the rent receipt is \$435.00. This receipt does not establish the applicant's entry in the United States prior to January 1, 1982, or continuous unlawful residence throughout the duration of the statutory period.
4. A May 21, 1993, notarized declaration by [REDACTED] who stated that the applicant visited her and her family in Morelia, Michoacan, from May 4, 1987 to May 20, 1987. This declaration does not establish the applicant's entry in the United States prior to January 1, 1982, or continuous unlawful residence throughout the duration of the statutory period.

The record contains a Form for Determination of Class Membership in *League of Latin American Citizens v. INS (LULAC)* signed by the applicant. The applicant stated that he first entered the United States on January 15, 1981. Although the applicant has submitted affidavits in support of his application, the applicant has not provided sufficient credible evidence of entry into the United States prior to January 1, 1982, or continuous unlawful residence in the United States throughout the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. [REDACTED]'s affidavit is the only one that supports the applicant's claim of entry prior to January 1, 1982. However, his statements are inconsistent with the applicant's own statements in his Form I-687.

The absence of sufficiently detailed, credible 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.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 and discrepancies, 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.