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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 224 61561

Office: GARDEN CITY

Date: DEC 16 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).

IN 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. Grisson, 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 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, the applicant puts forth a brief disputing the director's findings.

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 letter dated November 23, 1990, from [REDACTED], proprietor of Dakota Bar and Grill in New York, New York, who indicated that the applicant was in his employ as a helper from November 1982 to August 1984.
- A letter dated January 22, 2002, from [REDACTED], secretary of Belal Jame Masjid, Inc. in Brooklyn, New York, who indicated that the applicant "is known to the members of this Committee who has a great contribution towards the development of this Mosque since 19882 [sic]."
- Two letters notarized April 16, 2004, and December 23, 2004, from [REDACTED] who indicated that he has been closely associated with the applicant from 1981 and attested to the applicant's moral character. The affiant indicated that he used the applicant's services "once a month to help keep my apartment in good shape."
- A notarized statement notarized from [REDACTED] of Brooklyn, New York, who indicated that he has known the applicant since 1982. The affiant indicated that he and the applicant often met at social functions.
- A notarized affidavit from [REDACTED] of Woodside, New York, who indicated that the applicant "is well acquainted to me since 1981 as I saw him first in Jackson Heights, New York."
- A notarized affidavit from [REDACTED] of Astoria, New York, who indicated that the applicant had resided with him in Astoria at [REDACTED], from January 1982 to June 1990.
- A letter dated September 8, 1986, from [REDACTED], vice-president of Fay Chaw Merchants' Association, Inc. in New York, New York, who indicated that he has known the applicant since 1980 and has been on friendly terms with the applicant since that time.
- A statement dated November 16, 1992, from the Consulate General of Bangladesh in New York, who indicated that a passport was issued to the applicant on August 21, 1985 in New York.

On August 6, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that 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 that: 1) attempts to contact [REDACTED] proved unsuccessful; 2) the letter from [REDACTED] contradicted his oral testimony and Form I-687 application as he had claimed to have entered the United States on November 16, 1981. In an attempt to verify the contents of the letter, an officer of the Service telephoned the phone number listed on [REDACTED] letter; however, the individual who answered the phone hanged up twice and stated "go away;" 3) the year of the membership on the letter from Belal Jame Masjid is not clear as it indicates that the applicant had been known to the member of the committee since "19882." On July 27, 2007, an attempt to contact the Mosque proved unsuccessful as the telephone number indicated on the letter was not in service; 4) the employment letter from Andrew Hutton contradicts the applicant's claim on his Form I-687 application indicating he has been self-employed doing odd jobs from May 1982 to the present.

Counsel, in response, asserted that the applicant has submitted sufficient evidence to establish continuous residence in the United States prior to 1981. Counsel indicated that the applicant made best efforts to obtain information of the affiants but he could not reach them and due to the passage of time, the only evidence available is affidavits and/or letters. Counsel asserted, "[y]our office did not try to contact [REDACTED] because [the applicant] spoke with him and he stated nobody from your office contacted him regarding [the applicant's] whereabouts." Counsel submitted an additional letter dated August 17, 2007, from [REDACTED], who reaffirmed his statement to have known the applicant since 1981 and attested to the applicant's moral character.

The director, in denying the application, noted that the applicant failed to address the inconsistencies noted in the Notice of Intent to Deny and that the information and documentation submitted were insufficient to overcome the grounds for denial.

On appeal, the applicant asserts that he entered the United States on November 16, 1981, and has continuously resided in the United States since that time through May 4, 1988. The applicant states that he departed the United States on November 22, 1987 to Bangladesh due to his mother's illness and returned on December 26, 1987. The applicant indicates that the letter from [REDACTED] contained a typographical error as the correct year is 1981, and that [REDACTED] has not been affiliated with [REDACTED] Merchants' Association since January 1995.

Regarding his claim on his Form I-687 application to have been self-employed, the applicant asserts because he did not have a social security number or a tax payer identification number "I used the word 'self-employed' when generalized my odd jobs on the Form I-687 Form, dated: January 8, 1988." The applicant further asserts, "I was not that much educated in January 1988 about the deference(s) [sic] between the word 'Odd-Jobs' and the word 'Self-Employed.'"

The applicant submits:

- An additional letter dated October 14, 2007, from [REDACTED] who indicated that he met the applicant on December 16, 1981 at a Bangladesh parade in Astoria, Queens, New York. The affiant asserted that he is personally aware that the applicant resided at

[REDACTED], Astoria, New York, from November 1981 through May 1988.

- A notarized statement from [REDACTED] of Corona, New York, who indicated that she met the applicant at a private function in the last week of November 1981 in Jamaica, Queens, New York, and have remained friends since that time. The affiant asserted that she visited the applicant on several occasions during the requisite period at [REDACTED], Astoria, New York.
- An additional letter dated October 5, 2007, from Belal Jame Masjid & Islamic Center, Inc. (BMMIC), which indicates that the applicant has been a great contribution towards the development of the Islamic Center since March 1982. The letter indicates that the applicant submitted his BMMIC membership application on March 26, 1982 and had renewed his membership until 2007. The letter also indicates that the applicant “has been regularly praying his prayers in this mosque since he became a contributor for this mosque.”
- An affidavit from [REDACTED] of Woodside, New York, who indicated that the applicant resided at his residence [REDACTED] Astoria New York, from November 1981 to May 1988. The affiant indicated that he helped the applicant “to get a job at MIKE’S PIZZ PLACE, in Manhattan, New York, where he was employed as a Flyer Distributor between December 1981 and June 1982.
- A letter dated January 7, 1988, from [REDACTED] proprietor of Mike’s Pizza Place, who indicated that the applicant was employed as a flyer distributor from December 1981 to June 1982. The affiant asserted that during this period, he visited the applicant at [REDACTED], Astoria New York.
- An affidavit from [REDACTED] of Woodside, New York, who attested to the applicant’s residence at [REDACTED], Astoria New York from November 1981 to May 1988. The affiant asserted that she met the applicant in November 1981 at a private function and has remained good friends with the applicant since that time.
- A letter dated October 8, 2007, from [REDACTED] of Queens Cricket Club, who indicated that the applicant was a member of their 1987-1988 team. The affiant indicated that the club records reflect the applicant’s residence during 1987 and 1988 as [REDACTED], Long Island City, New York.
- A letter dated September 26, 2007, from [REDACTED] head coach of Forest Hills United Soccer Club (FHUSC) in Forest Hills, New York, who indicated that the applicant joined FHUSC in June 1982 and subsequently played in several tournaments until December 1989. The affiant indicated that the applicant was awarded “Player of the Year 1983” by the New York State Soccer Institute.
- A notarized statement from [REDACTED] of East Elmhurst, New York, who indicated that he met the applicant at a cultural event on March 26, 1986 and have remained good friends with the applicant since that time. The affiant asserted that between March 1986 and May 1988, he visited the applicant at [REDACTED], Astoria New York on several occasions.

- A letter dated October 12, 2007, from a medical doctor, [REDACTED], who indicated that the applicant was a patient between April 12, 1986 and April 24, 1986.
- A letter dated September 6, 1993, from [REDACTED], former landlord of [REDACTED] Astoria New York. The affiant indicated that the applicant had resided at this residence from November 1981 to May 1988 with [REDACTED]
- A letter dated August 10, 2005, from [REDACTED] of Madina Masjid, who indicated that the applicant has been a regular attendant of its Friday prayer sessions since January 1982. The affiant asserted that the applicant contributed \$500 for further construction of its mosque in January 1983.
- A letter dated May 10, 1987, from a representative of United Airlines, regarding the request for a refund of a ticket purchased by the applicant for travel on November 22, 1987 from John F. Kennedy International Airport to London, England.
- A letter dated April 15, 1986, from a representative of United World Telecom informing the applicant that he had reached the maximum limit of his credit for April.
- A notarized statement from [REDACTED], who indicated that he met the applicant in November 1981 and attested to the applicant's residence at [REDACTED] Astoria New York since that time.
- A statement dated January 22, 1988, on Bellevue Hospital Center letterhead and signed by the applicant regarding a self-employment statement of income.
- A letter dated January 22, 1988 from a representative at Flatbush Federal Savings, requesting the applicant to provide his social security number or taxpayer identification number.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by 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 entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. 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). Furthermore, the applicant indicated at item 35 on his Form I-687

application that he was not affiliated with any religious organization during the requisite period.

2. The employment letter from [REDACTED] has no probative value as it was not signed by the affiant. Furthermore, the applicant did not claim this employment on his Form I-687 application.
3. The affidavit from [REDACTED] and the employment letter from [REDACTED] raise questions to their authenticity as the applicant did not claim either employment on his Form I-687 application. Furthermore, [REDACTED] 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).
4. The employment letters from [REDACTED] and [REDACTED] also raise questions to their authenticity as the applicant indicated on his Form G-325A, Biographic Information, that he was "self employed as a construction helper." The duties indicated on the employment documents from [REDACTED] and [REDACTED] did not involve construction.
5. The statement from the Consulate General of Bangladesh in New York may only serve to establish that the applicant was in New York on August 21, 1985.
6. The applicant asserts that the letter from [REDACTED] contained a typographical error as the year the affiant met him should read 1981. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from [REDACTED] has been submitted to corroborate the applicant's statement. As such, [REDACTED]'s affidavit has little probative value or evidentiary weight.
7. The letters from Queens Cricket Club and Forest Hills United Soccer Clubs raise questions to their authenticity as the applicant indicated on his Form I-687 application that he was not affiliated or associated with any clubs or organization during the requisite period. Furthermore, the letter from the Queens Cricket Club listed the applicant's address as [REDACTED] Long Island City during 1987 and 1988; however, the applicant along with several affiants listed a different address during the same time period.
8. The remaining affiants attested to the applicant's residence in the United States during the requisite period, but 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 for the entire requisite period seriously detracts from the credibility of his claim.
9. The applicant asserts that his former attorney, who is deceased, maintained all his documents and "took care of my CSC Case matters from 1990-1994." A thorough review of the record, however, does not reflect that the applicant was being represented by anyone until his LIFE application was filed. The record contains no evidence of a Form G-28, Notice of Entry of Appearance as Attorney or Representative.

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).

Given the numerous credibility issues arising from the documentation provided by the applicant, it is determined that 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.