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

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FILE: [REDACTED]
MSC 02 248 60384

Office: NEW YORK CITY

Date: MAR 26 2008

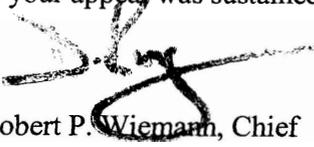
IN RE: Applicant: [REDACTED]

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 [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, New York City, 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, the applicant asserts that the director erred in denying his application. The applicant contends that he submitted sufficient corroborating affidavits, which are credible and amenable to verification. The applicant asserts that he has met his burden of proof. He submits additional evidence.

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), the director stated that the applicant failed to submit credible documents, which would constitute a preponderance of evidence as to his residence in the United States during the statutory period. The director also noted that the applicant testified that he was married on July 22, 1987, in Bangladesh, but he omitted this absence when questioned about his travels outside the United States during the statutory period. The director determined that the omission called into question the veracity of the applicant's claim of continuous residence in an unlawful status from before January 1, 1982, through May 4, 1988. The director granted the applicant thirty (30) days to submit additional evidence.

In response to the NOID, the applicant submitted his own affidavit in an attempt to reconcile any discrepancies. The applicant maintained that he entered the United States in November 1981 and furnished credible affidavits of his continuous unlawful residence during the statutory period. The applicant asserted that his marriage was performed via telephone and, therefore, he was not absent from the United States. In the Notice of Decision, dated August 11, 2007, the director determined that the applicant failed to overcome the grounds for denial. 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 continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In connection with his application, the applicant completed a Form for Determination of Class Membership in *CSS v. Meese*, dated July 20, 1992. The applicant stated that he first entered the United States on November 30, 1981, without inspection. He also stated that he was absent from the United States from June 1, 1987, through July 7, 1987.

The record contains the applicant's Social Security Statement, dated February 17, 2004. The statement indicates that the applicant received earnings for the years 1984 through 1990 and 1997 through 2001.

Further corroborating the applicant's claim of residence in the United States from 1984 through May 4, 1988, the record contains an Annual Personal Property Tax Return and Application for 1990 City Vehicle License, which indicates that the applicant acquired the vehicle on January 13, 1987. The record also contains a personal property tax statement in the applicant's name for the City of Alexandria, Virginia, for the year 1988.

The record includes three declarations from various banks. In a March 9, 1988, declaration, [REDACTED] of First Virginia Bank stated that the applicant opened a savings account in October 1984. In a February 12, 1990, declaration, [REDACTED] of Crestar, stated that the applicant's regular checking account was opened on September 25, 1987. In a February 12, 1990, declaration, [REDACTED] of Virginia First Bank, stated that the applicant had a savings account with the bank since August 1986. The record also contains a check written to the applicant, dated on March 18, 1988. There is no indication on the check that it has been processed or cancelled.

The record includes a medical receipt in the applicant's name from Adult & Pediatric Urologists of Northern Virginia dated September 22, 1985. The record contains a September 25, 1987, declaration by [REDACTED] (signature illegible). The declarant stated that the applicant bought a pair of Ray-Ban sunglasses from Brahm Opticians in April 1987. The declarant provided the business address and telephone number.

The record also includes a letter by [REDACTED], coordinator for Adult Learning Center, dated March 8, 1988. Ms. [REDACTED] stated that the applicant has been enrolled in English as a Second Language classes since October 1986. The affiant provided the center's business address and telephone number.

The record includes a sworn affidavit by [REDACTED] dated May 29, 1992. [REDACTED] stated that the applicant resided at [REDACTED] in Bethesda, Maryland, from June 1, 1985 to May 31, 1987 and from July 8, 1987 to December 31, 1991. The affiant provided his address of residence and telephone number.

Regarding the applicant's absence in 1987, the record contains affidavits by [REDACTED] and [REDACTED]. Mr. [REDACTED] provided two declarations stating that the applicant traveled with him to Canada from June 1987 through mid-July 1987. He provided address of residence. [REDACTED] provided an affidavit, dated November 1, 1993, in which he stated that the applicant came to visit him in Canada from June 1, 1987 to July 6, 1987. The affiant provided his address of residence.

For the time period 1984 through 1988, the applicant has submitted a variety of documents to support his claim. The applicant submitted a social security statement, property tax records, bank letters, a medical receipt, and several affidavits. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. While the affidavits lack sufficient corroborating details, the government documents provide more credible evidence in support of the applicant's claim. The AAO finds that the evidence establishes the applicant's continuous unlawful residence in the United States from 1984 through the duration of the requisite period. However, the applicant must also establish that he entered the United States before January 1, 1982, and continuously resided in the United States from since January 1, 1982 through May 4, 1988. Thus far, the applicant has only established his residence in the United States from 1984 through 1988.

In support of his claim of entry into the United States before January 1, 1982, the applicant only submitted the following six affidavits:

1. A July 29, 1993, declaration by [REDACTED], who stated that he has personal knowledge that the applicant has resided in the United States since December 1981. Mr. [REDACTED] stated that he has resided in the United States for the last sixteen years. He provided his address of residence and telephone number.
2. A May 17, 1992, declaration by [REDACTED], who stated that she has known the applicant since 1982. The declarant stated that she met the applicant through her neighbor [REDACTED].
3. A May 13, 1992, affidavit by [REDACTED], who stated that he has known the applicant since 1982. The affiant stated that during the past ten years, the applicant has helped him do household repair and maintenance work at his residence in Virginia.
4. A June 17, 1992, sworn affidavit by [REDACTED] who stated that he has personally knowledge that the application has resided in the United States since December 1, 1981.
5. A June 17, 1992, sworn affidavit by [REDACTED], who stated that the applicant has resided at [REDACTED], Wheaton, Maryland, from December 1, 1981 to May 31, 1985. The affiant provided her address of residence and telephone number.
6. A September 23, 1993, affidavit by [REDACTED] who stated that she has known the applicant since January 1982. She stated that at the time he resided in Wheaton, Maryland. She further stated that the applicant has been in the United States since December 1981. The affiant did not provide contact info.

It is noted that while the applicant submitted various types of evidence to establish his residence from 1984 through 1988, the applicant only submitted affidavits to establish his residence prior to 1984. These affidavits lack sufficient, credible details and provide minimal probative value.

Although not required, none of the affidavits included any supporting documentation of the affiants' presence in the United States during the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. Three of the five affiants [REDACTED] and [REDACTED] failed to provide the applicant's address of residence during the requisite period. Mr. [REDACTED] provided two contradictory affidavits. In one affidavit, [REDACTED] stated that he has known the applicant since 1982, whereas in another affidavit he stated December 1, 1981. This discrepancy, coupled with 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.

It is also noted that the record contains a Form I-140, Petition for Prospective Immigrant Employee, filed by Calsi Construction Corporation on April 13, 1989. In connection with his immigrant visa

application, the applicant was interviewed on February 26, 1990. During his interview, the applicant stated that he entered the United States on September 1, 1984, with a B-2 visa. The applicant's testimony directly contradicts his Form for Determination of Class Membership, wherein he stated that he first entered the United States on November 30, 1981, without inspection. It is incumbent upon the applicant to resolve any discrepancies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistency. This inconsistency seriously detracts from the credibility of his claim. The AAO finds that the totality of the evidence tends to indicate that the applicant first entered the United States in 1984.

It is further noted that the applicant has not reconciled the discrepancy regarding his omitted absence in 1987. The record includes a copy of the applicant's marriage certificate, which indicates that the applicant was married on July 22, 1987, in Bangladesh. The applicant contends that his marriage was performed via telephone and, therefore, he was not absent from the United States in 1987. The record contains no independent objective evidence to substantiate the applicant's claim that he was married by telephone in 1987.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes major discrepancies, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions.

Although the applicant has submitted numerous affidavits in support of his application, the applicant has not provided sufficient contemporaneous evidence of residence in the United States from before January 1, 1982, through May 4, 1988. 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 major discrepancies and minimal probative value, 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.