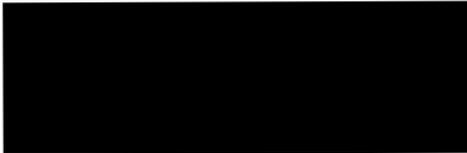


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



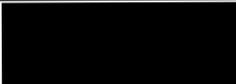
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE:



Office: CHICAGO

Date:

MAR 27 2008

MSC 02 010 61305

IN RE:

Applicant:



APPLICATION:

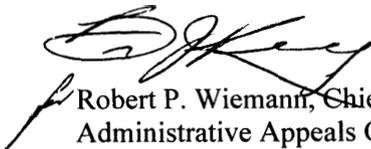
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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. Wieman, 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, Chicago, Illinois. A motion to reopen was filed, which was dismissed as there are no motion rights under the LIFE Act. The applicant was provided the opportunity to file an appeal. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides additional evidence along with copies of previously submitted documents in support of 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 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 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.

The applicant, in an affidavit, notarized December 7, 1989, indicated that he illegally entered the United States in October 1981; departed the United States in June 1982 to visit his family; obtained a B-2 visa in June 1982 and returned to the United States the same month; departed the United States in May 1987 and returned in June 1987; and none of his absences exceeded 30 days at a time.

At the time the applicant filed his LIFE application, he only submitted a Social Security Statement dated October 10, 2000, reflecting his earnings since 1987, and a passport issued on January 12, 1987, in Bangladesh. It must be noted that the passport also contains: 1) an endorsement dated March 23, 1987, regarding the applicant's address change in Bangladesh; 2) a F-1 multiple entry non-immigrant visa issued on April 13, 1987, authorizing the applicant to attend Wichita State University in Wichita, Kansas. The visa was valid until April 12, 1988; 3) an exit and entry stamp dated May 5, 1987, and May 22, 1987, respectively from the Bangladesh immigration; 4) a departure stamp dated June 2, 1987, from the Bangladesh immigration; and 5) a Form I-94 indicating the applicant lawfully entered the United States on June 3, 1987, with an F-1 visa.

The director issued a Form I-72 dated May 21, 2002, which requested the applicant to submit medical and/or dental documentation from November 6, 1986 to May 4, 1988, and his enrollment papers from Wichita State University and evidence establishing his entry prior to January 1, 1982.

The applicant, in response, indicated that he attempted to obtain his passport, but his parents no longer had it in their possession. The applicant asserted that he did not visit a doctor until 1995 and submitted the following:

- A lease agreement entered into on April 18, 1985, in the names of the applicant and [REDACTED] for residence on [REDACTED] (number of street is indecipherable), [REDACTED], Chicago, Illinois for the period May 1, 1985 to April 30, 1986.
- A Form I-20A-B, Certificate of Eligibility for Non-Immigrant (F-1) Student Status, dated March 13, 1987, by a representative of Wichita State University.
- Documentation from Test of English as a Foreign Language, reflecting that the applicant took a Test of English as a Foreign Language in November 1987.
- A cashier's check dated October 13, 1987.
- A renewal application for a Kansas Driver's License dated November 30, 1987.
- A Kansas identification card issued in 1987.
- An envelope postmarked February 22, 1984, addressed to the applicant at [REDACTED], Chicago, Illinois.
- A lease agreement entered into on April 29, 1983, in the names of [REDACTED] & [REDACTED] for residence at [REDACTED], Chicago, Illinois for the period of September 1, 1983 to August 31, 1984.

The director issued a Notice of Intent to Deny dated May 2, 2003, which advised the applicant of his failure to provide sufficient primary or secondary evidence to establish his claim. The director noted that the affidavit and other documentation had been taken into consideration; however, it was determined that the applicant had not established by a preponderance of evidence that he met the requirements to adjust his status under the LIFE Act.

The applicant, in response, asserted that except for a CTA Pass, a Kmart receipt and an affidavit from an acquaintance, he has nothing else to submit. The applicant indicated that he did not attend school or visit a doctor and his prior employers are no longer in business and, therefore, he cannot obtain employment verification letters. The applicant submitted a notarized affidavit from [REDACTED] of Chicago, Illinois, who indicated that he has known the applicant since March 1983. The affiant asserted that the applicant resided with him at [REDACTED] in Chicago from August 1983 to April 1985.

On appeal, counsel asserts that the director erred in finding that the applicant had failed to establish his entry prior to January 1, 1982, as it is not possible to substantiate an entry which was without inspection. Counsel also asserts that the applicant's entry on June 3, 1987, with a student visa did not interrupt his continuous unlawful presence because he did not maintain his student status and was returning to an unrelinquished unlawful residence. Counsel submits:

- CTA passes issued in January and May 1984, and May and July 1985.
- A declaration from [REDACTED] of Presto, Pennsylvania, who indicated that he met the applicant and his parents on October 22, 1981, at the Pittsburgh airport. The affiant asserted the applicant visited him in June 1982 and again in September 1983.

Citizenship and Immigration Services (CIS) 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, CIS 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 continuously resided in the United States during the requisite period.

1. Although the Form I-687 application requests the applicant to list his residences and employment in the United States since his first entry, the applicant only listed residences since 1989, and did not list any employment. It must be noted that the applicant was given another opportunity to complete his Form I-687 application in a notice dated June 23, 2001; however, the applicant, in response, indicated that he was not filling out the enclosed Form I-687 because he had previously filled one out.
2. As the applicant was a minor (13 years old) in 1981, it is conceivable that he would have been residing with an adult during the period in question. The applicant, however, has not provided the name of the individual he resided with, an attestation from said individual and the address of residence.

3. [REDACTED] indicated that he has known the applicant since October 22, 1981, but provided no address for the applicant during the requisite period, no details regarding the nature or origin of his relationship with the applicant, and except for two visits in June 1982 and September 1983 no basis for his continuing awareness of the applicant's residence.

These factors raise significant issue to the legitimacy of the applicant's residence from prior to January 1, 1982, and raise questions about the authenticity of the remaining documents the applicant has presented in an attempt to establish continuous residence in the United States through June 2, 1987.

4. Item 35 of the Form I-687 application requests the applicant to list *all* absences from the United States since January 1, 1982. The applicant indicated he was only absent during June 1982 and from May 1987 to June 1987. However, his passport was issued to him in Bangladesh on January 12, 1987. No explanation has been provided how the passport was issued with his photo when he was supposed to be residing in the United States.

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).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the 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.