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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK Date: **NOV 20 2008**
MSC 02 253 60462

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: Self-represented

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 Director, New York, 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 requests that his application be reconsidered because he has submitted sufficient evidence to establish his claimed residence in the United States during the requisite period. The applicant indicates that no supplemental brief or additional evidence will be submitted.

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 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.

Citizenship and Immigration Services (CIS) records reflect that on May 19, 1998, the applicant arrived from Dhaka, Bangladesh at John F. Kennedy (JFK) International Airport and was referred to secondary inspection. At the time of his interview, the applicant admitted in a sworn statement that he first entered without inspection through Miami, Florida in 1986.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided affidavits from individuals attesting to his residence and employment, a lease agreement entered into in June 1985 and postmarked envelopes.

On May 12, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that he provided no primary or secondary evidence to corroborate his testimony and the affidavits submitted lacked probative value as the information provided on the affidavits could not be verified by CIS. The applicant was also advised of his sworn statement taken on May 19, 1998.

The applicant, in response, asserted that on May 19, 1988, during his inspection, "the immigration officer told me he didn't let me enter the United States. After I heard that I was shocked, emotional, and nervous. Emotionally I may sign the statement, but the truth is that I first came to the United in July 5, 1981." The applicant submitted an affidavit from [REDACTED] of Sunnyside, New York, who indicated that in July 1981, the applicant flew from Miami to JFK airport and he received the applicant from the airport.

An inference cannot be drawn that the information or documentation submitted is now accurate simply because the applicant recants his admission. Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I&N Dec. 213 (BIA 1965).

While not mentioned by the director, the applicant, in his sworn statement, also admitted that he returned to Bangladesh in 1988 and stayed for two months before reentering the United States with a visitor visa in 1988. The applicant also admitted that he first entered the United States through Miami, Florida.

However, at item 17 of the Form I-687 application, the applicant indicated that he had entered without inspection through the "Canadian" border. Item 35 of the Form I-687 application requests the applicant to list *all* absences from the United States since entry. The applicant listed only one absence from the United States; July 1987 to August 1987. The applicant's failure to disclose his 1988 departure from the United States is a strong indication that the applicant was outside the United States beyond the period of time allowed by regulation.

In light of his sworn statement, the documentary evidence submitted by the applicant, in an attempt to establish continuous residence in the United States prior to 1986, cannot be considered as having any probative value or evidentiary weight.

The applicant has, therefore, failed to establish that he resided in *continuous* unlawful status in the United States from before January 1, 1982 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.

Beyond the decision of the director, it must be noted that the applicant indicated on his Form G-325A, Biographic Form that he was married on May 26, 1995 in Bangladesh. However, at the time of his LIFE interview on May 9, 2007, the applicant indicated that he was married in 1986 in Bangladesh.

This inconsistency further undermines the credibility of the applicant's claim to have only departed the United States in 1987. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.