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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 03 105 60935

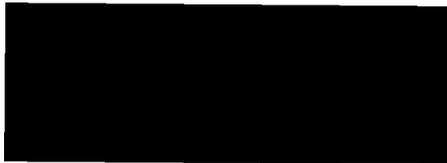
Office: NEW YORK

Date: **NOV 25 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:



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. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel asserts that the director erred in finding that the evidence submitted was not credible. Counsel contends that the submitted affidavits conformed to U.S. Citizenship and Immigration Services' guidelines. Counsel submits additional affidavits in support of the applicant's claim.

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 must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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.* at 80. 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.12(f).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant’s claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The affidavits from A [REDACTED] and [REDACTED] all contain statements that the affiants have known the applicant for several years and that they attest to the applicant being physically present in the United States during the requisite period. These affidavits fail, however, to establish the applicant’s continuous unlawful residence in the United States for 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; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant’s residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States from a specified date. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The affidavit from [REDACTED] also provides minimal probative value as he fails to state how he met the applicant or any details of their claimed relationship that would indicate knowledge of the applicant's place of residence or the circumstances of his residency in the United States during the requisite period. Lacking relevant details, this affidavit will be given minimal weight as evidence in support of the applicant's claim.

The two employment affidavits from [REDACTED] and [REDACTED] fail to conform to the regulatory standards at 8 C.F.R. § 245a.2(d)(3)(i). Neither employer provided the applicant's address at the time of employment, declared whether the information was taken from company records, and identified 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. Lacking relevant details, these affidavits will be given minimal weight as evidence in support of the applicant's claim.

The affidavit from [REDACTED], who stated that the applicant resided with him in New York from 1980 to 1991, is consistent with the applicant's claimed place of residence during this time period. The affidavit from [REDACTED] who stated that he met the applicant in 1980 when working for Islam Construction, is also consistent with the applicant's own testimony in the record. However, both affiants failed to provide details regarding their claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's entry into the United States, his places of residence or the circumstances of his residence over the years of their claimed relationship. Lacking relevant details, these affidavits have minimal probative value.

The record includes a declaration from [REDACTED] President of Pubali Travel & Tours, who stated that the applicant was issued a British Airways ticket and left JFK International Airport for Bangladesh on August 1987. This declaration is not amenable to verification and, therefore, will not be given any weight as evidence in support of the applicant's claim.

The final item of evidence is an affidavit from the Secretary and President of [REDACTED] Inc., who stated that the applicant has contributed towards the development of the [REDACTED] since January 1981. This affidavit does not conform to the regulatory standards at 8 C.F.R. § 245a.2(d)(3)(v). The affiant failed to state the address where the applicant resided during the membership period, to establish how the author knows the applicant, and to establish the origin of the information being attested to. Lacking relevant details, these affidavits will be given minimal weight as evidence in support of the applicant's claim.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.