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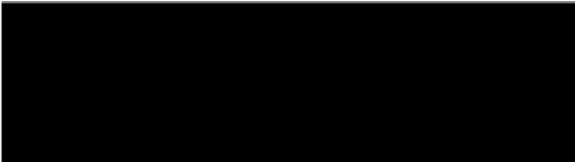
Office: NEW YORK

Date: OCT 22 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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

The director determined that the applicant failed to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

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 states 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 petitioner 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 petitioner 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 or petition.

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). *See* 8 C.F.R. 245a.15(b). 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). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's past employment should be on employer letterhead stationery, if the employer has such stationery, and 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 record reflects that the applicant, a native and citizen of Bangladesh, submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), in or about November 1990. On the Form I-687, the applicant indicated that he had a son born in Bangladesh on "09/05/82." The applicant also claimed to have entered the United States without inspection by boat from the Bahamas on August 31, 1981, and to have departed to Canada and returned to the United States (again without inspection) on only one occasion since that entry - from May 16, 1987, to June 25, 1987. In support of the Form I-687, the applicant submitted the following documentation:

1. A letter, dated March 5, 1991, from [REDACTED], stating that [REDACTED] accompanied him on a trip to Canada by car from May 16, 1987, to June 25, 1987.
2. A letter, dated March 10, 1991, from [REDACTED], stating that the applicant was employed as a cleaner by Robe Films Production, Brooklyn, New York, from November 1981 to April 1986.
3. A fill-in-the-blank "affidavit of verification of residency," dated March 18, 1991, from [REDACTED] stating that "[REDACTED]" had been his tenant at [REDACTED], Ozone Park, Queens, New York, from September 1981 to July 1990.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, under Section 1104 of the LIFE Act on August 10, 2001. The applicant was interviewed in connection with his application on June 6, 2002.

In a Notice of Intent to Deny (NOID) the Form I-485, dated April 18, 2007, the director noted that the applicant's testimony lacked credibility and that there were discrepancies in the information

provided on his Forms I-687 and I-485. The director also noted that documentation submitted by the applicant appeared to be fraudulent. The director specifically noted that with regard to No. 2, above, pursuant to information provided by an operator with the New York Telephone Directory, the area code given by Mr. [REDACTED] became obsolete in 1985; the letterhead and address given did not relate to Robe Films Production from 1982 to 1988; and, neither Mr. [REDACTED] nor the applicant were known at the address provided. Furthermore, with regard to Nos. 1 and 3, neither Mr. [REDACTED] nor Mr. [REDACTED] provided telephone numbers and were not known at the addresses given during the time period being attested to.

In response to the NOID, the applicant, through counsel, submitted the following additional documentation:

4. A fill-in-the-blank letter, dated April 17, 2006, from the American Red Cross, New York, New York, stating that a fire occurred at the applicant's address - [REDACTED] New York, New York, on February 20, 1997.
5. A letter, dated May 3, 2007, from [REDACTED] stating that he had known the applicant since June 1982.
6. A letter, dated May 4, 2007, from [REDACTED] stating that she had known the applicant since December 1985.
7. A letter, dated May 7, 2007, from [REDACTED], stating that he had known the applicant since December 1987.

In a Notice of Decision (NOD), dated June 28, 2007, the director denied the application. In her decision, the director noted that Citizenship and Immigration Service (CIS) records revealed that the applicant had a child born in Bangladesh in 1982 (on his Form I-687, the applicant indicated the child's birth date as "09/05/82;" however, the applicant had stated that his spouse had never been in the United States and that he had not departed prior to 1987 after his initial entry in August 1981. The applicant, through counsel, filed an appeal from the director's decision on July 26, 2007.

On appeal, counsel asserts that director did not give proper consideration to the evidence submitted by the applicant in support of his Form I-687 and that the applicant has made diligent efforts to pursue his claim. Counsel further requests that the applicant's case be reviewed. In support of the appeal, counsel submitted the following new documentation:

8. Photocopies of birth certificates indicating the applicant's children were born in Bangladesh on May 9, 1982, and January 18, 1993.
9. A photocopy of a receipt from E & W Electronics, L.L.C., Jackson Heights, New York. The applicant's name and the date (April 15, 1986) on the receipt are hand-written.

10. A photocopy of a receipt from Cuzin's Meat Co., LTD., New York, New York. The applicant's name is not on the receipt and the date (July 1, 1986) of issuance is hand-written.

The issue in this proceeding is whether the applicant has demonstrated that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

The lack of credibility with regard to Nos. 1, 2, and 3, above have not been explained by the applicant either in response to the NOID or on appeal. With regard to No. 4, a CIS officer contacted the American Red Cross at the number given on June 28, 2007, and they advised that they had no records. The affidavits provided in Nos. 5, 6, and 7, do not provide details as to the affiants' knowledge of the applicant's entry prior to January 1, 1982, and little detail that would lend credibility to their alleged 20-plus year relationships with the applicant. As such, the affidavits afford minimal weight as evidence of the applicant's residence and presence in the United States throughout the relevant period. As the applicant's name and the dates are hand-written on the receipts provided in Nos. 9 and 10, they have little probative value.

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 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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, 591-92 (BIA 1988).

The AAO concludes that the applicant has not met his burden of proof. He 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 since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.