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

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FILE:

MSC 02 113 62956

Office: NEW YORK

Date:

SEP 05 2008

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

The district director denied the application on the ground that the applicant failed to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

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

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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 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.13(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 employment 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 applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on January 21, 2002. On March 9, 2006, the district director denied the application. The applicant, through counsel, filed a timely appeal from that decision on April 5, 2006.

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 from before January 1, 1982 through May 4, 1988.

The record reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

Applicant's affidavit

- An undated affidavit from the applicant that is not properly notarized by the applicant's counsel in that it does not contain the year of notarization – merely “May 2nd” – stating that he had resided in the United States since 1981 and providing the names, addresses, and telephone numbers of three acquaintances: [REDACTED] and [REDACTED]. The applicant states that he requested his friends to give proof of their **presence in the United States since in or before 1981 or other proof of their identity**, but while they swear they lived in the United States since before 1981, only [REDACTED] was willing to provide a photocopy of his naturalization certificate.

Employment affidavits/letters

- A notarized letter, dated November 30, 2001, from [REDACTED] of [REDACTED] Home Improvement, Brooklyn, New York, stating that the applicant worked with his construction firm as a painter from 1984 to 1987. In a second letter, notarized on March 12, 2004, [REDACTED] states that he had known the applicant since

February 1981 and that the applicant worked with him as a helper from February 1981 (the final digit in the year 1981 has been altered – it was “white-ed out” and the number “1” has been written in ink in place of the original final digit) to December 1982. The record also contains a photocopy of a [REDACTED] naturalization certificate, showing that he was naturalized in New York in 1990. It is noted that

- A notarized letter, dated November 30, 2001, from [REDACTED] Contractor, stating that the applicant was employed as a construction worker from 1981 to 1983.

Neither of the employment letters provided comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; 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. Neither of the letters are on original company letterhead – the paper on which they are typed are photocopies. As noted above, the second letter from [REDACTED] contains an alteration regarding the year in which the applicant’s employment began. Furthermore, although both employers claim to have employed the applicant during some of the same time period – from 1981 to 1982, there is no explanation as to the circumstances under which the worked for both companies.

Affidavits/letters from acquaintances

- An undated affidavit that is also not properly notarized by the applicant’s counsel in that it does not contain the year of notarization – merely “May 2nd” - from [REDACTED] of Corona, New York, stating that he had met the applicant in Bangladesh in 1974. Mr. [REDACTED] states that he arrived in the United States in 1985, and that since that time he and the applicant visited each other’s homes on a regular basis. Mr. [REDACTED] further states when he arrived in the United States, the applicant was living in Brooklyn and that “...I understand he had lived there since 1981...”
- A notarized letter, dated March 15, 2004, from [REDACTED], stating that he had been doing business at [REDACTED] for 25 years and that since starting his business, the applicant was a regular customer at his store.
- A notarized letter, dated March 15, 2004, from [REDACTED], of Brooklyn, New York, stating that he had known the applicant since he came to the United States in 1981, the applicant is his best friend, and they worked together as handy-men.
- Two similar fill-in-the-blank affidavits of witness. One, dated January 2, 2002, from [REDACTED] of Brooklyn, New York, stating he had known

the applicant since 1981 because that went to marketing and mosque together. The other, notarized on December 15, 2001, from [REDACTED] of Brooklyn, New York, stating that he had personal knowledge that the applicant resided at [REDACTED] Brooklyn, New York, from 1981 to 1982.

- Two similar typewritten letters, dated November 30, 2001. One, from [REDACTED] (on which the signature differs from that of [REDACTED] on the affidavit of witness, noted above), stating “This is to certify that [the applicant] is a personally known to me. He is individually honest and sincere. He is [sic] lived from 1981 from [sic] 1983 as a room mate, sharing [U]tilities and other bills expences [sic]. He is honest and sincere. I wish him all the success in life.” The other is signed but the name on the letter is illegible. The letter is worded exactly the same as [REDACTED] except that the affiant states that the applicant was a room-mate from January 1984 to December 1987.

As previously noted, the only affiant to provide identifying documentation was [REDACTED]. None of the other affiants provided identifying documentation, and none provided evidence of their residences in the United States at the time the statements were made, did not state in detail how they first met the applicant in the United States, or how frequently and under what circumstances they saw the applicant during the requisite period. The affiants have provided little information for concluding that the affiants had direct and personal knowledge of the events and circumstances of the applicant’s residence in the United States. As such, they can only be afforded minimal weight as evidence of the applicant’s residence and presence in the United States throughout the requisite period.

Physician’s letter

- A handwritten letter, dated December 27, 2001, from [REDACTED], of Brooklyn, New York, stating that the applicant had been a patient since December 21, 1989. The letter from [REDACTED] is not notarized and does not show the dates that he treated the applicant.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no credible school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children’s birth certificates, dated bank book transactions, letters of correspondence, a Social Security card, automobile contract, insurance documentation, tax receipts, insurance policies, or letters according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of third-party affidavits (“other relevant documentation”) that significantly lack details and are of minimal 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 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

It is concluded that 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 since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 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.