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U.S. Citizenship  
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Services

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L2

[REDACTED]

FILE:

MSC 02 204 62858

Office: NEW YORK

Date:

**SEP 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:

[REDACTED]

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.

Handwritten signature of Robert P. Wiemann in black ink.

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 had not established 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 for the applicant asserts that the applicant has resided continuously in the United States from January 1, 1982 through May 4, 1988, and states that the applicant has submitted sufficient evidence to establish the requisite continuous residence. Counsel does not submit additional evidence on 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 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.

On December 7, 2006, the director issued a notice of intent to deny (NOID) informing the applicant of the intent to deny his LIFE Act application because he had failed to establish the requisite continuous residence. The director noted that the applicant submitted questionable affidavits and that the documentation of record contradicted the applicant's testimony that he had resided in the United States since prior to January 1, 1982. The applicant was granted thirty days to respond to the notice.

In the Notice of Decision, dated January 9, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID but failed to submit additional evidence and merely asserted that the affidavits submitted are sufficient to establish the requisite continuous residence.

On appeal, counsel reasserts that the evidence submitted is sufficient to establish the requisite continuous residence. Counsel does not submit any additional evidence on appeal.

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. The applicant submitted employment letters and affidavits as evidence to establish the requisite continuous residence in support of his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

#### Employment Letter / Affidavits

The applicant submitted a letter of employment, dated February 20, 1991, from [REDACTED] for the Manager of Bengal Groceries, located at [REDACTED], stating that the applicant had been employed as a counterperson from October 1986 to July 1990.

In addition, the applicant submitted a letter of employment, dated January 10, 1991, from [REDACTED] for the Manager of [REDACTED] located at [REDACTED] York, New York, stating that the applicant had been employed as a busperson from July 1981 to September 1986.

These letters of employment, however, failed to 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

### Affidavits & Letter

The applicant submitted two sworn affidavits, dated May 8, 1991, from both [REDACTED] and [REDACTED]. In one of their affidavits each affiant attests to knowing the applicant in the United States, but do not indicate any additional information about the applicant. However, in their second affidavits (which appear to be filled-in from their first affidavits) both affiants attest to knowing the applicant in the United States since June 1981. These affidavits, however, are not probative as none of the affiants indicate how they dated their acquaintance with the applicant, when their acquaintance with the applicant began, whether and how they maintained a relationship with the applicant, and whether the applicant has been a continuous resident during the requisite period.

The applicant also submitted a notarized letter, dated April 9, 1991, from [REDACTED] stating that the applicant was his tenant from June 1981 to July 1990. [REDACTED] however, does not indicate the address where the applicant resided. It is also noted that [REDACTED] does not provide any supporting documentation to substantiate the claimed residence of the applicant.

Contrary to counsel's assertion, the applicant has submitted questionable letters and questionable affidavits in support of his application. Although the applicant testified that he had resided in the United States since May 1981, and that since his entry he departed for Canada in June 1987 and returned to the United States in July 1987, the record of proceedings reflects that the applicant was issued a Bachelor of Science degree by the University of Chittagong (in Bangladesh), in 1986; and, a "Statement of Results" from the Board of Intermediate and Secondary Education, in Comilla, Bangladesh, stating that the applicant was in Bangladesh in 1987. These documents clearly indicate that the applicant was in Bangladesh during the years leading to 1986 to permit him to complete a bachelor's degree program. Therefore, the applicant could not have been in the United States prior to 1986 as he claims. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record.

In addition, the applicant has submitted questionable affidavits. For example, two affidavits from [REDACTED] appear to be filled-in form affidavits signed by the same affiants and notarized on the same day. There is no indication why the applicant submitted two versions of form affidavits, one which is substantially blank, and one which is a filled-in version, from the same affiants attesting to knowing the applicant in the United States since June 1981.

These unresolved discrepancies cast further doubt on whether the applicant's claim that the applicant entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has

failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

Also, although not required, none of the affiants or the letter writers included any supporting documentation of the affiant's presence in the United States during the requisite period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

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.

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