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**U.S. Citizenship
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FILE:



Office: NEW YORK

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IN RE:

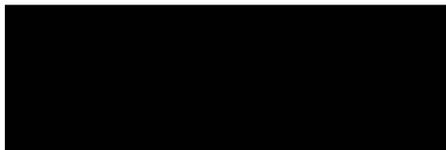
Applicant:



APPLICATION:

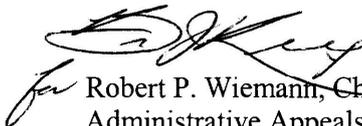
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.


for 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 on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The director noted that the applicant failed to respond to a July 26, 2006 notice of intent to deny (NOID).

On appeal, counsel asserts that the applicant never received the director's notice of intent to deny, and therefore, the applicant did not submit a rebuttal in response to the NOID. Counsel prays that AAO remand the matter to the director for a new decision. Counsel does not submit additional evidence, on appeal.

It is noted that the NOID was mailed to the applicant's address of record, § [REDACTED] which is the same as the address indicated on his Form I-485, filed on October 11, 2001, and on the October 6, 2006 denial notice. It is also noted that a copy of the NOID was mailed to the applicant's attorney of record at the time. In addition, there is no indication that the NOID was returned as unclaimed.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹ The AAO will review the record and issue a decision.

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.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). However, as noted above, counsel does not submit any additional evidence on appeal. The record, will therefore, be considered complete.

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.

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

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following:

Employment Letters

The applicant submitted a letter of employment, dated December 12, 1990, from [REDACTED] Owner of GANDHI Restaurant, located at [REDACTED] states that the applicant worked as a waiter at his restaurant from August 1987 to August 1990, and was paid in cash.

In addition, the applicant submitted a letter of employment, dated November 24, 1990, from [REDACTED] Manager of Passage to India restaurant, located [REDACTED] N.Y., stating that the applicant had been employed from September 1981 to May 1987.

It is noted that the letters failed to provide the applicant's address at the time 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

Affidavits and letters

The applicant submitted the following:

1. An affidavit from [REDACTED] notarized on December 20, 1990. [REDACTED] states that he has known the applicant in the United States since the end of December 1980. The affiant, however, does not indicate how he dates his acquaintance with the applicant, whether he maintained a relationship with the applicant, or whether the applicant has been a continuous resident since that time.
2. A letter, dated December 1, 1990, from [REDACTED], Secretary of Islamic Council of America, Inc., located at [REDACTED] stating that the applicant has been a regular member since 1981, and states that the applicant regularly attended Jumma prayer at the [REDACTED] in Manhattan, New York. [REDACTED] however, does not state what, if any, activities the applicant participated in as a member; nor does he indicate the basis of his knowledge that the applicant regularly attended [REDACTED] prayer at the [REDACTED]
3. A letter, dated November 21, 1990, from [REDACTED] of Bangladesh Society, located at [REDACTED] stating that the applicant has been a member since 1981, that he participated in various literary and cultural program(s), and that he paid membership fees until 1988.
4. An undated notarized letter from [REDACTED] stating that he has known the applicant in the United States since August 1981, and that the applicant lived with him

from September 1, 1981 to August 1984. The affiant, however, does not indicate whether the applicant has been a continuous resident since that time.

5. An undated handwritten letter from [REDACTED] stating that she has known the applicant in the United States since the early part of 1981. [REDACTED] states that the applicant was introduced to her by a friend, and she and the applicant have socialized together several times.
6. An undated notarized letter from [REDACTED] stating that he has known the applicant in the United States since August 3, 1981 when the applicant arrived from Mexico. Mr. [REDACTED] states that the applicant departed for Bangladesh on June 17, 1987 and returned on July 26, 1987. The affiant, however, does not indicate whether or how he kept in touch with the applicant, and whether the applicant has been a continuous resident since he became acquainted with him.
7. A notarized letter from [REDACTED] stating that she has known the applicant in the United States since 1981. The affiant, however, does not indicate how she dates her acquaintance with the applicant, whether or how she kept in touch with the applicant, and whether the applicant has been a continuous resident since she became acquainted with him.
8. A letter, sworn to on January 5, 1991, from [REDACTED] stating that the applicant shared an apartment, located at [REDACTED] from August 1987 to August 1990.
9. An undated notarized letter from [REDACTED] stating that he knows the applicant resided in the United States since August 1981. [REDACTED] states that the applicant kept in contact with him until the applicant moved to Florida. The affiant does not indicate how he dates his acquaintance with the applicant, or how he and the applicant kept in touch.
10. An undated letter from [REDACTED] stating that he has known the applicant for a long time. This letter, however, is not probative as the affiant does not indicate when he became acquainted with the applicant in the United States, how he dates his acquaintance with the applicant, and whether the applicant has been a continuous resident since he became acquainted with him.
11. An undated notarized letter from [REDACTED], stating that he and the applicant shared an apartment, located at [REDACTED] from September 1984 to May 1987.
12. A form affidavit from [REDACTED], notarized on January 5, 1991, stating that he has known the applicant to have resided in the United States since October 1981. The affiant lists addresses for the applicant in the United States from September 1981 through

August 1990. The affiant, however, does not indicate how he dates his acquaintance with the applicant, or how he maintained contact with the applicant since his acquaintance with the applicant.

The applicant has submitted numerous letters and affidavits in support of his application in an attempt to establish his residence in the United States during the duration of the requisite period, however, these documents are questionable.

It is noted that the applicant stated that he has resided continuously in the United States since 1981. On his Form I-687 the applicant indicates only one absence from June – July 1987, when he traveled to Bangladesh to visit his sick parent. However, the record contains a marriage certificate for the applicant which indicates that the applicant was married in Bangladesh on December 8, 1986. The applicant's marriage certificate contradicts the affidavits and his claim of continuous residence in the United States since 1981. **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). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. 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.

In addition, as stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. 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. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.