

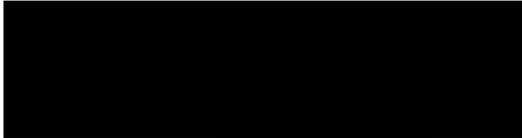
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U.S. Citizenship
and Immigration
Services

L2



FILE: MSC 02 190 62624

Office: NEW YORK

Date: **SEP 23 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 be "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, 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, the applicant¹ contends that he never received the Notice of Intent to Deny (NOID). He states his place of address never changed. The AAO notes that the NOID was mailed to the applicant's place of address on record. The NOID was not returned as undelivered.

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.

¹ The Form I-290B, Notice of Appeal or Motion, was filed by _____ on behalf of the applicant. It is noted that _____ was convicted in the United States District Court for the Southern District of New York for willfully causing the subscription of an immigration document containing a material false statement and presenting an immigration document containing a false statement. *In re: _____ Attorney*, ___ I&N ___ (BIA May 7, 2008). _____ was immediately suspended by the Board of Immigration Appeals on May 7, 2008, based on the conviction, pending final disposition of the case. Therefore, his appearance will not be recognized.

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.

On April 8, 2002 the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). The record contains the following evidence relating to the requisite period:

1. An affidavit, dated July 1, 1992, from [REDACTED] secretary of Hossain Contracting Co., Ltd. The affiant stated that the applicant was employed by the company as a mason helper in November 27, 1981, the applicant was promoted to office assistant on December 5, 1984, and the applicant left the company on June 26, 1987. By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant’s address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer’s willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). This affidavit does not meet these regulatory standards. The affiant did not provide the

applicant's place of residence at the time of employment. Nor did the affiant offer to either produce official company records or to testify regarding unavailable records. Given this, the affidavit can be accorded only minimal weight as evidence of residence during the requisite period.

2. An affidavit, dated June 24, 1992, from [REDACTED], owner of Alice Fashions. The affiant stated that the applicant has been employed as a sales person since July 2, 1987. The affiant stated that the applicant left the United States to visit Bangladesh from November 7, 1987 to December 11, 1987. This affidavit does meet the regulatory standards pursuant to 8 C.F.R. § 245a.2(d)(3)(i). The affiant did not provide the applicant's place of residence during the employment period. In addition, the affiant did not offer to either produce official company records or to testify regarding unavailable records. This affidavit can be accorded only minimal weight as evidence of residence during the requisite period.
3. An affidavit, dated April 1, 1992, from [REDACTED] who stated that to her personal knowledge the applicant has resided in the United States from November 1981 to April 1992. The affiant stated that she was introduced to the applicant in November 1981 by a friend, [REDACTED]. The affiant failed to provide details regarding her claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's 1981 entry into the United States, his place of residence or the circumstances of his residence over the prior ten years of her claimed relationship. Lacking relevant details, this affidavit has minimal probative value.
4. An affidavit, dated May 8, 1992, from [REDACTED] who stated that to her personal knowledge the applicant has resided in the United States from December 1986 to 1992. The affiant stated that she was introduced to the applicant by her husband, [REDACTED] at her marriage ceremony on November 25, 1986. The affiant also provided a photo from her wedding. The affiant failed to provide details regarding her claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's place of residence or the circumstances of his residence over the prior five or six years of her claimed relationship. Lacking relevant details, this affidavit has minimal probative value. The wedding photo provides no probative value because there is no indication of the date, the location or the names of the people in the photograph.
5. An affidavit, dated September 4, 1992, from [REDACTED] who stated that to his personal knowledge the applicant has resided in the United States from December 1984 to June 1992. The affiant stated that the applicant worked with him at Hossain Contracting Co., Ltd. The affiant failed to provide details regarding his claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's place of residence or the circumstances of his residence over the prior seven or eight years of his claimed relationship. The affiant failed to provide any details regarding his position or the applicant's position at Hossain Contracting Co., Ltd. or the applicant's employment period. Lacking relevant details, this affidavit has minimal probative value.

6. An affidavit, dated April 6, 1993, from [REDACTED]. The affiant stated that the applicant was his tenant at [REDACTED] from December 1981 to mid-1991. He stated that the applicant resided with [REDACTED]. The record also includes an apartment lease agreement, dated December 10, 1981, between [REDACTED] and the applicant and [REDACTED]. The record also contains eight rent receipts in the applicant and [REDACTED] names, and eleven postmarked envelopes addressed to the applicant from Bangladesh, one for each year from 1981 to 1991. As noted by the director in the NOID, the lease, rent receipts and envelopes do not have an appearance of reliability and, therefore, are not credible. The documents cannot be given any weight as evidence of the applicant's residence in the United States during the requisite period.
7. One airline ticket in applicant's name indicating travel from New York to London to Dhaka on November 8, 1987. This document does not establish the applicant's continuous physical presence during the requisite period. It can only be given some weight of the applicant's presence in November 1987.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The affidavits in the record that refer to the relevant years are bereft of sufficient detail to be found credible or probative. Not one affiant indicates credible personal knowledge of the applicant's entry into the United States in 1981 or credibly attests to his presence in the United States during the statutory period. Although some credible evidence of his presence in the United States in 1987 is included in the record, there is minimal evidence of residence before that time.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in November 19, 1981, without inspection, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

The AAO finds that, 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 applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), 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 lack of credible supporting documentation in the record, 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 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.