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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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FILE:

MSC 02 224 60614

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IN RE: Applicant:

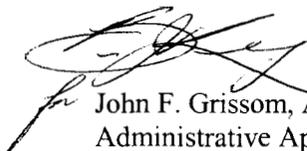
APPLICATION:

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. 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.

  
John F. Grissom, Acting 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 determined that the applicant had not established his continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

On appeal, the applicant asserts that the director erred in not giving adequate weight to the evidence provided, and he has submitted sufficient evidence to establish eligibility for LIFE Act legalization. The applicant 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.

In the Notice of Intent to Deny (NOID), dated September 29, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant admitted at his interview on May 10, 2005, that in support of his claim of continuous residence in the United States during the requisite period, he submitted affidavits from affiants who were unknown to him and he had obtained the affidavits from a friend named [REDACTED]. The director also noted that the remaining affidavits were neither credible nor amenable to verification. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated December 8, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant's response to the NOID failed to overcome the reasons for denial stated in the NOID. The director also noted that the applicant had been absent from the United States from September 29, 1987 to October 31, 1987, an absence of 33 days which the applicant claimed was due to a visit to his sick cousin in Mexico. However, the applicant did not know the address of his cousin in Mexico, and failed to provide evidence to validate the alleged illness of his cousin; therefore, the applicant could not establish that the absence was due to an emergent reason. Accordingly, the director determined that the absence of 33 days was not brief, casual and innocent.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate his continuous residence and his continuous physical presence in the United States in an unlawful status during the requisite period. The applicant submitted evidence, including a letter of employment, and affidavits to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

#### Employment Letter

The applicant submitted a letter of employment, dated April 2, 1993, from [REDACTED] Manager of [REDACTED] located at [REDACTED], stating that the applicant had been employed as a delivery person since March 10, 1981.

It is noted, however, that the letter 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). The letter, therefore, is not probative as it does not conform to the regulatory requirements.

Affidavits and letters

The record contains the following:

1. Two affidavits from [REDACTED] dated September 13, 2004, and February 15, 2008, respectively, attesting to knowing the applicant to have resided in the United States since September 1981. In his first affidavit, [REDACTED] attests that he met the applicant at a cultural program in 1981, and since then they have met each other at family, social, and cultural events. In his second affidavit, [REDACTED] lists addresses, in New York, for the applicant from March 1981.
2. Two affidavits from [REDACTED] dated January 5, 2005, and February 15, 2008, respectively, attesting to knowing the applicant to have resided in the United States since 1987. In her first affidavit, [REDACTED] also attests that the applicant is a “good friend,” and he participates in religious meetings and family occasions. In her second affidavit, [REDACTED]. [REDACTED] lists addresses, in New York, for the applicant from September 1987.
3. A notarized letter from [REDACTED] attesting to having known the applicant to have **resided in the United States since 1984**. [REDACTED] also attests that the applicant participates in community and religious meetings, and attends all occasions of the Bangladesh Society in New York.

However, the affiants do not supply enough details to lend credibility to an at least 20-year relationship with the applicant. For instance, the affiants do not indicate how they date their acquaintance with the applicant in the United States so as to reflect that they had a personal knowledge of the applicant’s presence in the United States, except making generalized statements, such as that they met the applicant at a cultural event; do not indicate how frequently they had contact with the applicant; or, whether and how they maintained a relationship with the applicant since their acquaintance with the applicant. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant’s claim of continuous residence and continuous physical presence in the United States throughout the requisite period.

The record of proceedings also contains a letter from [REDACTED], located at [REDACTED], stating that he has known the applicant for a “long time,” and, in 1987 when he was the Imam of the [REDACTED] the applicant performed his prayers at the Masjid. The letter is not probative, however, as it does not indicate during what periods the applicant attended the Masjid. Furthermore, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the

organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letter from the [REDACTED] does not comply with the above cited regulations because it does not state the address where the applicant resided during the attendance period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letters are not deemed probative and are of little evidentiary value.

In addition, the applicant has submitted questionable documentation. In an attempt to establish his continuous residence in the United States throughout the requisite period, the applicant submitted affidavits from [REDACTED], and, [REDACTED]. However, contrary to the applicant's assertion, these affidavits are not credible. As noted by the director, the applicant admitted at his interview on May 10, 2005, that these affiants were unknown to him, and he had obtained the affidavits from a friend named "[REDACTED]" These affiants, therefore, cannot attest to the applicant's residence in the United States as they do not know the applicant.

The above discrepancies cast considerable doubt on whether the applicant resided in the United States from March 1981 as he claimed. 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.

It is noted that even if the applicant's 33-day absence to Mexico from September 29, 1987 to October 31, 1987, is deemed brief, casual and innocent, the evidence, discussed above, does not individually, nor cumulatively, establish the requisite continuous residence. The applicant has not submitted any additional evidence in support of his claim that he entered the United States prior to January 1, 1982, and that he had resided continuously and was continuously physically present in the United States during the entire requisite period.

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, and his continuous physical presence, 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.