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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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U.S. Citizenship
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FILE: [REDACTED] Office: GARDEN CITY Date: **APR 22 2009**
MSC 02 235 63187

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).

IN BEHALF OF APPLICANT:
[REDACTED]

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.

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, Garden City, 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 had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the applicant submitted sufficient documents, including two envelopes postmarked in 1981 and 1987, to establish his continuous residence in the United States during the requisite period.

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 and through May 4, 1988. Section 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 events testified to in their respective affidavits.

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. Here, the applicant has failed to meet this burden.

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

- Two photocopied metered envelopes postmarked October 1, 1981 and March 19, 1983.
- A social security printout reflecting the applicant's earnings since 1988.
- A letter dated May 15, 2002, from [REDACTED] the general secretary of [REDACTED] in Elmhurst, New York, who indicated that the applicant has been a member of its organization from 1985 to 1989.
- A statement dated May 14, 2002 from [REDACTED] who indicated that the applicant has been residing in the United States "for last many years and occasionally [sic] keep I touch with me."
- An affidavit from [REDACTED] who indicated that the applicant has been a personal acquaintance since 1981. The affiant attested to the applicant's moral character.
- An affidavit notarized May 16, 2002, from [REDACTED] who indicated that he has been acquainted with the applicant since 1981. The affiant asserted that he has been the applicant's guardian since the applicant's uncle left him in his custody, and that he assisted the applicant in getting an apartment in Astoria.
- A statement dated April 11, 2004, from [REDACTED] who indicated that he has been taking care of the applicant from late 1981 to 1987. The affiant attested to the applicant's moral character.
- An affidavit from [REDACTED] who indicated that he has been acquainted with the applicant since 1986. The affiant asserted that he met the applicant at a Bangladesh cultural party and has remained friends with the applicant since that time.

On July 27, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits. The applicant was also advised that his passport indicated that it was issued in Bangladesh on May 10, 1987; however, the applicant indicated at his interview to have departed the United States in July 1987.

In response, the applicant asserted, "I was able to apply for a passport in Bangladesh prior to my trip. My parents obtained the form to fill out and sent it me. I completed the form in New York and sent it back to Bangladesh." The applicant submitted:

- A photocopied metered envelope postmarked December 21, 1981, addressed to the applicant in care of [REDACTED] at [REDACTED] Elmhurst, New York.

- An affidavit from [REDACTED], who indicated that he has known the applicant since 1983. The affiant asserted, "I occasionally kept in touch over the years but became close with [the applicant] when I moved in Jackson Heights of Queens."
- A letter dated August 9, 2007, from [REDACTED], New York, who indicated that the applicant has been a member of its organization since 1985.
- Affidavits from [REDACTED] and [REDACTED] who indicated that they have known the applicant since 1982 and 1985, respectively. The affiants attested to the applicant's moral character.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits should be analyzed to determine if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988.

The applicant indicated on his Form I-687 application that he was issued a F-1 visa in Dhaka, Bangladesh on July 26, 1987, and that he visited Bangladesh from July 22, 1987 to September 2, 1987. As previously discussed, the applicant's passport was issued to him in Dhaka, Bangladesh on May 10, 1987. The applicant has not explained how an *identity* document was issued with his photo when he was supposed to be residing in the United States. Counsel, on appeal, asserts that the parents of the applicant are in the process of obtaining proof that they filed the applicant's application for his passport. Counsel requests additional time in which to provide such proof. However, more than 17 months later no further correspondence has been provided from counsel to support his assertion. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The letters from [REDACTED] and [REDACTED] have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiants do not explain the origin of the information to which they attest. Furthermore, the applicant did not list any affiliation or association with an organization during the requisite period at item 34 on his Form I-687 application.

Although item 36 of the Form I-687 application requests the applicant to list the full name and address of each employer during the requisite period, the applicant failed to provide complete information and did not provide any evidence to establish employment from these employers. As such, the applicant's alleged employment is not amenable to verification by USCIS.

The remaining affiants all attested to the applicant's residence in the United States during the requisite period; however, they failed to state the applicant's place of residence during the requisite period, and the basis for their continuing awareness of the applicant's residence. 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.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

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). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.