

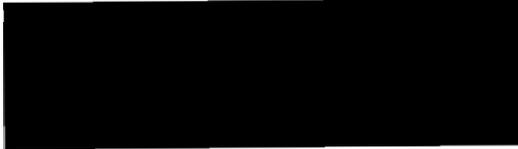
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:



Office: NEW YORK

Date: FEB 03 2009

MSC 02 225 65019

IN RE: Applicant:



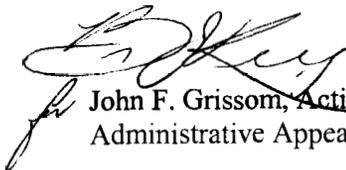
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she determined that the applicant had not established that she entered the United States before January 1, 1982, and that she 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 states that the applicant has submitted sufficient evidence to establish her continuous residence, and that the director erred in not giving adequate weight to the evidence. Counsel submits 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).

In the Notice of Intent to Deny (NOID), dated June 20, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating her entry prior to January 1, 1982, and her continuous unlawful residence in the United States during the requisite period. The director noted that the applicant testified at her interview that in April 1987 she had departed the United States for Bangladesh for two months to get married. Therefore, the applicant's absence constitutes a break in her continuous residence. The director granted the applicant thirty (30) days to submit additional evidence.

In her response to the NOID, the applicant stated that at her interview she had indicated that she had been absent from the United States during April and May 1987, for less than 45 days. The applicant also states that her absence was from April 15, 1987 to May 25, 1987.

In the Notice of Decision, dated August 11, 2007, the director denied the application, noting that the applicant responded to the NOID, but that the response failed to establish her continuous residence throughout the requisite period.

On appeal, counsel reasserts that the applicant has submitted sufficient evidence in the form of affidavits to establish the requisite continuous residence. With the appeal, counsel submits additional evidence.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status during the requisite period. In an attempt to establish continuous unlawful residence in the United States during the requisite period since prior to January 1, 1982, the applicant submits letters and affidavits as evidence to support her Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

The applicant submitted the following:

Affidavits & Letters

1. An affidavit from [REDACTED] stating that the applicant has been in the United States since 1981. [REDACTED] also states that since 1981 he has seen the applicant once or twice a month, and that they share fun activities. The affiant, however, does not indicate how he dates his acquaintance with the applicant, nor does he specify when they shared activities, and under what circumstances he had contact with the applicant during the purported 26-year relationship.
2. An affidavit from [REDACTED]. The affiant contradicts himself and states in Paragraph 6 of his affidavit that he has known the applicant since 1981; and, in Paragraph 8 he states that he has known the applicant since 1982. [REDACTED] also states

that he met the applicant in Astoria, New York in 1982 and that they have continued to meet since that time. The affiant, however, does not indicate when in 1982 he met the applicant, how he maintained a relationship with the applicant, and how frequently he had contact with the applicant.

In addition, the applicant provided a photocopy of her Bangladesh passport, and a letter from the Bangladesh Consulate General of New York, dated April 24, 2002. The passport and the letter indicate that the applicant's passport, No. [REDACTED] which was issued in New York on April 10, 1981, expired on April 9, 1985, and had been lost. It is further noted that the record also contains a letter from the Bangladesh Consulate General of New York, dated October 7, 2002, which also states that the same passport had been issued in New York on April 10, 1981, and expired on April 9, 1985. It is noted that this later letter, which is accompanied by a photocopy of the passport, No. J [REDACTED] does not indicate that the passport had been lost. The passport also indicates that it had been renewed until April 8, 1991 by the Bangladesh Consulate General of New York. This passport evidence, however, does not establish the applicant's continuous residence during the requisite period.

It is also noted that the record reflects that the applicant, who was born on February 1, 1968, and who claims that she has been residing in the United States since 1981, was only 12 years old when she entered the country. However, the applicant does not submit any school or medical records nor does she provide an explanation as to why she is unable to provide her school records. In addition, the applicant does not provide any supporting documentation as to how she was able to sustain herself or make contributions towards rent or household expenses at such a young age. In 1981 the applicant was 12 years old, and therefore, would have had to have been provided for and cared for by an adult. Yet, no such documentation was provided. In addition, the applicant submitted a Biographic Data Form, G-325A, signed on May 7, 2002, stating that she resided in Dhaka, Bangladesh, from February 1968 until August 1990, and that she was a student from January 1973 to August 1990.

These discrepancies cast considerable doubt on whether the applicant resided in the United States since 1981 as she claims. 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 she continuously resided in the United States in an unlawful status during the requisite period.

The applicant has not provided any reliable evidence of residence in the United States for the requisite period. 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. 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. Given the applicant's reliance upon documents with minimal probative value, it is concluded that she 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, she 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.