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U.S. Citizenship  
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Services

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FILE:

MSC 02 165 60549

Office: NEW YORK

Date:

**FEB 03 2009**

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:

SEL-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "J. Grissom".

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. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, the applicant submits a brief statement and additional documentation.

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 its amenability to verification. *See* 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 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). *See* 8 C.F.R. 245a.15(b). 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). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on March 14, 2002. On September 22, 2007, the director denied the application. The applicant filed a timely appeal from that decision on October 21, 2007.

The applicant, a native and citizen of Bangladesh, claims to have initially entered the United States on January 6, 1981, and to have departed the United States on only one occasion during the requisite time period – from May 18, 1984 to June 20, 1984 – in order to visit his sick mother in Bangladesh.

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 issue in this proceeding is whether the applicant has established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

The record reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

1. A notarized photocopy of a Bank of Oman Limited transaction statement, dated March 25, 1982, sold to the applicant and paid to the order of a recipient in Bangladesh. The statement appears to have been altered in that the applicant's name on the statement (sold to) is in a different type than that contained on the remaining portion of the statement.
2. A letter, dated January 12, 2001, from [REDACTED] of Nostrand News Agents in Brooklyn, New York, stating that the applicant had been employed as a counter person from February 1982 to May 1988 at an hourly basis of \$3.00 paid in cash. The employment letter provided by [REDACTED] does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to 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.
3. An affidavit from [REDACTED], notarized on April 22, 1991, stating that the applicant resided at his property located in Ozone Park, New York, from October 1981 to December 1987. The affidavit is not corroborated by any objective evidence such as a rental agreement, rent receipts, letters of correspondence addressed to the applicant at that location, etc.
4. A color photocopy of an Aerogramme envelope, addressed to the applicant in Queens, New York, with a postmark date of December 1, 2001.
5. A photograph of the applicant which he alleges was taken of him on March 3, 1982, in New York, in which the applicant is wearing an "Old Navy" shirt. However, "Old Navy" was not founded until 1994.
6. An affidavit, notarized on December 9, 2000, from [REDACTED] of Bronx, New York, stating that he had known the applicant since 1974 in Bangladesh, and that he had accompanied the applicant to the United States Citizenship and Immigration Services (USCIS) office in Manhattan on December 8, 1987. In a second affidavit, dated November 9, 2001, [REDACTED] reiterates his previous attestation. In a third affidavit, notarized on October 10, 2007, [REDACTED] states also reiterates his previous attestations.
7. A letter, notarized on December 15, 2001, from [REDACTED] of Astoria, New York, stating that he first met the applicant in Long Island City, New York, in December 1981 where he was performing song.

8. A letter from Sky Ride Travel Aid LTD in Bangladesh, indicating that the applicant traveled from Dacca, Bangladesh, to New York, New York, on June 19, 1984, and photocopies of documentation indicating that the applicant traveled on Biman/Bangladesh Airlines to New York on June 19, 1984.
9. An affidavit, notarized on July 26, 2007, from [REDACTED] of Woodside, New York, stating that he had known the applicant since December 1983 – that he met the applicant at the Henry David Thoreau School Auditorium in Astoria, New York, where the applicant was performing song.
10. An affidavit, notarized on October 10, 2007, from [REDACTED] of Sunnyside, New York, stating that he first met the applicant at a cultural function on December 16, 1981 at the Buhamium Park Auditorium in Astoria, New York, and that since then, they have had a good relationship.

For the duration of the requisite time period, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no church, union or organization attestations that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v)(A) through (G).

The applicant also has not provided documentation regarding his alleged initial and subsequent entry into the United States, letters of correspondence, a Social Security or Selective Service card, automobile license receipts, deeds, tax receipts, insurance policies or other similar documentation according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(B) through (K).

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 (5<sup>th</sup> ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Due to the paucity of credible, verifiable documentation contained in the record, the AAO concludes 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** since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.