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

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JAN 08 2009
MSC 02 138 61085

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, 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 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 alleged inconsistency regarding the purpose of his visit to Canada did not undermine his overall credibility and the reliability and the sufficiency of the evidence presented. Counsel submits additional affidavits from affiants in support of the appeal.

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 document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States 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 seven affidavits of residence, a letter of membership and an affidavit relating to his purported absence from the United States in 1987.

The director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status during the requisite period and, therefore, denied the LIFE application on August 24, 2006.

Counsel's remarks on appeal relating to the sufficiency of the evidence the applicant submitted in support of his claim of continuous residence are noted. However, during the adjudication of the applicant's appeal, information came to light that adversely affects the applicant's overall credibility as well as the credibility of his claim of residence in this country from prior to January 1, 1982 to May 4, 1988.

The applicant's prior A-file [redacted] reflects that on September 10, 1992, he attempted to enter the United States with a counterfeit United States visa and a Bangladesh passport bearing the name of someone other than the applicant. In a Record of Sworn Statement signed on September 10, 1992, the applicant admitted his true name to be "[redacted]" and his date of birth as January 10, 1971. The applicant further admitted that he purchased the passport from Rahman Travels in Sylhet, Bangladesh and that his purpose to come to the United States was to seek political asylum as he claimed to be a member of the Jatio Party. On his Form I-589, Application for Asylum and Withholding of Removal, the applicant indicated at part D, Item 24 that he had never traveled to the United States before. On his Form G-325A, Biographic Information, signed September 15, 1992, the applicant listed his residence from January 1987 to August 1992 in Sylhet, Bangladesh.

On October 2, 1996, the applicant filed for adjustment of status under section 245 of the Immigration and Nationality Act, based on his registration in the 1997 Diversity Immigrant Visa (DV) program. Along with his Form I-485 application, he submitted a Form G-325A signed October 1, 1996, and a copy of his birth certificate and passport. The birth certificate reveals the applicant's name to be [redacted] with a date of birth of January 10, 1971. The passport, issued on February 24, 1993, by the Consulate General of Bangladesh in New York, lists the applicant's name as [redacted] and date of birth as January 10, 1971. The Form G-325A indicates that the applicant resided in his native country, Bangladesh, from birth to September 1992.

On his Form I-687 and LIFE applications, the applicant lists his name as [redacted] and [redacted], respectively. On both applications, the applicant lists his date of birth as January 10, 1960, and claimed to have no other alien registration file or aliases. The photocopied passport submitted with the LIFE application lists the applicant's name as [redacted] and date of birth as January 10, 1960. The passport was issued on January 5, 1993, by the Consulate General of Bangladesh in New York.

In support of his LIFE application, the applicant submitted an affidavit from , who claimed to have known the applicant since 1981 and that the applicant had been in his employ since 1993. However, in support of the Form I-485 application under the 1997 DV program, Mr. in his notarized affidavits of September 30, 1996, and February 10, 1997, made no mention of knowing the applicant during the requisite period and indicated that the applicant's employment commenced in July 1996.

This derogatory information establishes that the applicant made material misrepresentations in asserting his claim of residence in the United States during the requisite period and thus casts doubt on his eligibility for adjustment to permanent residence under the provisions of the LIFE Act. By engaging in such an action, the applicant has negated his own credibility, the credibility of his claim of continuous residence in this country for the requisite period, and the credibility of all documentation submitted in support of such claim.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On October 30, 2008, the AAO issued a notice to the applicant and to counsel which advised them that it was the AAO's intent to dismiss the applicant's appeal based upon this derogatory evidence. The applicant was granted 15 days to provide evidence to overcome, fully and persuasively, these findings. To date, however, no response has been presented by either counsel or the applicant. Therefore, the record must be considered complete.

The derogatory information negates the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documents, we affirm our finding of fraud. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

A finding of fraud is entered into the record, and the matter will be referred to the United States Attorney for possible prosecution as provided in 8 C.F.R. § 245a.2(t)(4).

ORDER: The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.