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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 138 60822

Office: NEW YORK

Date: JAN 26 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: SELF-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.

 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 determined that the applicant had not established that he 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, the applicant states that the director erred in arbitrarily determining that the documents he submitted were insufficient evidence to establish his continuous residence, and states that the documents that he submitted are all authentic. The applicant, therefore, asserts that he has submitted sufficient credible evidence to establish his continuous residence from before January 1, 1982 through May 4, 1988. With his appeal, the applicant submits some of the same evidence earlier provided.

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 May 21, 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 failed to submit credible evidence of his claimed entry in December 1980, and a claimed trip to Bangladesh in April 1986, and his return trip to the United States the same month. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated July 16, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID but failed to submit sufficient evidence to overcome the reasons for denial stated in the NOID. The director noted that the applicant stated at his interview that since his entry he had departed the United States once, to Bangladesh¹, in April 1986 and returned to the United States in the same month; and, his wife had never been to the United States. However, the applicant had a child born in Bangladesh on February 24, 1987. The director concluded that it was highly unlikely that the applicant's wife could have carried the child for 10 months. The director determined, therefore, that the applicant's claim lacked veracity.

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. The applicant submitted letters of employment, affidavits, and mail envelopes as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Employment Letters

The applicant submitted two letters of employment, from _____ and from _____
Mr. _____ states that the applicant lived with him for one year from December 1980, and worked with him for one and one-half years. However, _____ does not indicate when the employment commenced or ended, nor does he indicate where, or in what capacity the applicant had

¹ The director inadvertently stated in the decision that the applicant had visited Pakistan in April 1986. The interviewing officer's notes reflect that the applicant stated he had visited Bangladesh in April 1986 and returned the same month.

been employed. [REDACTED] states that the applicant worked at his store, [REDACTED], located at [REDACTED] West Palm Beach, Florida, from December 1986 to June 1988.

The applicant also submitted a letter of employment from [REDACTED] Assistant Manager, of [REDACTED], located in Jamaica, New York, stating that the applicant had been employed as a Waiter from September 1982 to November 1984.

It is noted that the letters failed to provide the applicant's address at the time of employment, failed to 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). These letters, are therefore, not probative as they do not conform to the regulatory requirements.

Affidavits and letters

The applicant submitted the following:

- 1) Affidavits from [REDACTED]; and, and [REDACTED] and [REDACTED] state that they have known the applicant since 1986; [REDACTED] states that he has known the applicant since 1982; and, [REDACTED] states that the applicant, her uncle, visited her in Michigan on September 24, 1981. However, the affiants do not indicate whether or how they maintained a relationship with the applicant, and whether the applicant has been a continuous resident in the United States since their acquaintance with him.
- 2) Affidavits from [REDACTED], and [REDACTED]. [REDACTED] states that he remembered that the applicant came to the United States in 1980, and that the applicant used to communicate with him from the United States, and that he knows that the applicant lived in America since that time. [REDACTED] states that the applicant came to the United States in 1980 and that the applicant wrote him a letter in June or July 1981, and that the applicant has resided in the United States ever since. These affiants, however, do not indicate whether or how they maintained a relationship with the applicant since his arrival in the United States.

The applicant also submitted copies of mail envelopes which are addressed to him in the United States. The applicant indicates that the envelopes were mailed to him in 1981, 1982, and in 1986. These mail envelopes, however, are questionable. It is noted that one of the envelopes is addressed to the applicant at [REDACTED], N.Y. 11435, and one is addressed to him at [REDACTED], N.Y. 11435. First, it is noted that on his Form I-687, where he is requested to provide all residences in the United States since his first entry, the applicant listed [REDACTED] N.Y. 11435 as one of his addresses; however, there is no indication on the Form I-687, or in the record, that the applicant ever resided at [REDACTED], N.Y. 11435. These address are at least two blocks apart, and it is unlikely the applicant would receive mail addressed to him at [REDACTED], N.Y. 11435, in that he never resided at that address.

These discrepancies cast doubt on whether the applicant's claim that he first entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. 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 he continuously resided in the United States in an unlawful status during the requisite period.

Contrary to applicant's assertion, he has failed to submit sufficient credible evidence to establish his continuous residence in the United States during the requisite period. The evidence submitted does not, individually or cumulatively, establish the applicant's continuous residence throughout the requisite period.

Also, 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 affiants included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants stated how frequently they met the applicant or whether and how they maintained a relationship with the applicant. 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.

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, 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.