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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 03 168 61685

Office: GARDEN CITY

Date: MAR 03 2009

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).

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, Garden City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.¹

The director denied the application because the applicant failed to demonstrate 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 asserts that he has submitted sufficient documentation to verify his claim and establish his eligibility for status as a permanent resident. He maintains that he entered the United States before January 1, 1982, and has resided continuously in an unlawful status during the statutory period. The applicant provides copies of previously submitted evidence. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.²

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 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 through May 4, 1988. *See* § 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 and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

¹ The applicant filed two separate LIFE Act applications.

² The AAO maintains plenary power to review each appeal 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 AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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.* at 80. 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 or petitioner 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).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of attestations from individuals claiming to know the applicant and photos. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The affidavits from [REDACTED] and [REDACTED] all contain statements that they first met the applicant in November 1981 and that the applicant told them that he entered the United States through the Canadian border. Both [REDACTED] and [REDACTED] stated that they were friends with the applicant's father and that the applicant came to their residences looking for shelter. These affidavits will be given some weight as evidence in support of the applicant's claim.

The affidavits from [REDACTED] and [REDACTED] both contain statements that they personally have knowledge that the applicant entered the United States before January 1, 1982, and that the applicant told them that he entered the United States through the Canadian border. However, [REDACTED] stated that he met the applicant in December 1984 and [REDACTED] stated that he met the applicant in December 1985. This discrepancy casts doubt on the credibility of the

affiant's statements. This evidence will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

It is also noted that some of the above affidavits contained photos. These photos were identified by the applicant to be taken within the statutory period. However, the record contains no independent, objective means to determine the date or the location of these photos. Therefore, the photos carry minimal weight as evidence in support of the applicant's claim.

The two employer attestations from [REDACTED] and [REDACTED] do not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Neither [REDACTED] or [REDACTED] provide the applicant's address at the time of employment, 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. Given the lack of relevant details, the attestations will be given minimal weight as evidence in support of the applicant's claim of continuous residence during the requisite period.

The attestations from [REDACTED] and [REDACTED] of the Bangladesh Society Inc., New York, do not conform to regulatory standards for letters from organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). They fail to show inclusive dates of membership, state the address where the applicant resided during membership period, establish how the author knows the applicant, and establish the origin of the information being attested to. Lacking relevant details, the attestations will be given minimal weight as evidence in support of the applicant's claim of continuous residence during the requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms. It is noted that some of his forms in the record contradict or bring into question his claim of entering the United States before January 1, 1982 and continuous residence since such date.

The record includes a Form G-325A, Biographic Information, signed by the applicant under severe penalties for knowingly and willfully falsifying or concealing a material fact. On his Form G-325A, the applicant indicated that his last address outside of the United States for more than one year was a address in Bangladesh, where he resided from July 1969 to October 1986. The applicant's own statement indicates that he did not begin residing in the United States until December October 1986. This information directly contradicts the applicant's claim to have resided in the United States throughout the requisite period, as well as the previously mentioned statements of his affiants.

In addition, the record includes a Form I-687, Application for Status as a Temporary Resident, signed by the applicant. The applicant's Form I-687 corroborates the statements in his G-325A. In his Form I-687, at Question 16, the applicant stated that he last came to the United States on October 25, 1986. It is also noted that the applicant failed to list any place of residence or employment prior to November 1985. The discrepancy in the applicant's G-325A, coupled with the statements in his Form I-687, cast serious doubt on the credibility of the applicant's claim.

The discrepancies in the record, noted above, are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, 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. *See Matter of Ho, supra.* Upon review, the AAO finds that, individually and together, the evidence in the record does not indicate that the applicant's claim is probably true.

Based upon the foregoing, 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 from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.