

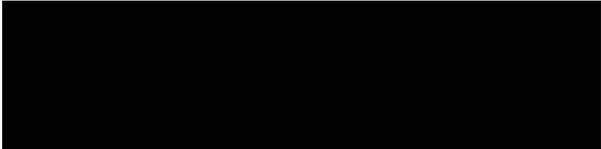
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U.S. Department of Homeland Security
Citizenship and Immigration Services
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



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FILE:



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Office: NEW YORK

Date:

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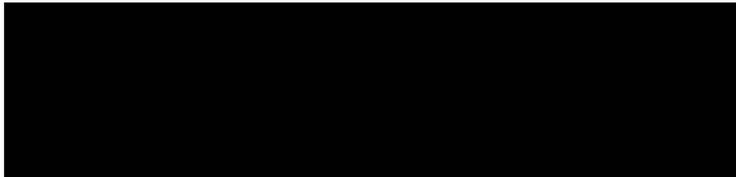
IN RE: Applicant:



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.

A handwritten signature in black ink, appearing to read "John F. 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, 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, counsel for the applicant states that the director failed to make mention, in the denial decision, that she attempted to verify an affidavit from [REDACTED] submitted by the applicant in response to the director's notice of intent to deny. Counsel does not submit 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).

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 January 28, 2008, 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 submitted affidavits from [REDACTED] and [REDACTED], which were unverifiable. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated March 6, 2008, the director denied the instant application based on the reasons stated in the NOID. It is noted that in response to the NOID the applicant stated that [REDACTED] and [REDACTED] had passed away; and, [REDACTED] was visiting Bangladesh. The director noted that, in response to the NOID, the applicant submitted an affidavit from [REDACTED] which the director deemed not plausible or relevant.

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 five affidavits 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.

The applicant submitted an affidavit from [REDACTED] dated February 26, 2008, attesting to knowing the applicant to have resided in the United States since January 1981. Mr. [REDACTED] also states that he met the applicant at a Muslim event, and since 1981 the applicant visited his apartment several times. The affiant, however, does not provide any additional details of his claimed first encounter with the applicant, nor does he indicate when or under what circumstances the applicant visited him. The affiant also does not indicate whether and how he maintained contact with the applicant since that time.

The applicant submitted affidavits from [REDACTED] and [REDACTED]. These affiants attest to having known the applicant to have resided in the United States since 1981. The affiants, however, do not indicate how they dated their acquaintance with the applicant, and whether and how they maintained contact with the applicant since that time. These affidavits, are therefore, not probative as they lack essential detail. As also noted above, these affidavits were not verifiable as [REDACTED] and [REDACTED] had passed away, and, [REDACTED] was visiting Bangladesh.

In addition, the applicant submitted an affidavit from [REDACTED], who attests that the applicant had been his roommate at an apartment at [REDACTED], Brooklyn, New York 11210, from December 1, 1987 to February 28, 1989. This affidavit, however, lacks details, such as the financial arrangements; and, does not relate to the period prior to December 1987, and is not probative as to the applicant's residence during these periods.

It is also noted that the applicant was married in Bangladesh on June 15, 1983, and had children born in Bangladesh on March 11, 1984, and on May 27, 1984, respectively. The applicant claims that since his first entry into the United States in January 1981, without inspection; he departed for Bangladesh on two occasions, in June 1983 and in August 1987; and, he returned to the United States in July 1987, and in September 1987, respectively, again without inspection on each occasion. However, he does not provide any details of his claimed three trips from Bangladesh to the United States, and his two trips from the United States to Bangladesh. It is reasonable to expect that the applicant would be able to provide details of his claimed extensive travels during the requisite period. This lack of detail casts considerable doubts on whether the applicant first entered the United States in January 1981, and traveled to Bangladesh in 1983 and 1987, as he claims. It is further noted that the applicant does not provide any evidence of his travel during these years. 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.

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 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.

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.