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U.S. Citizenship
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Services

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[REDACTED]

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FILE:

MSC 02 117 62882

Office: NEW YORK

Date:

MAR 23 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:

[REDACTED]

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 she 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 asserts that the applicant has submitted sufficient evidence to establish the requisite continuous residence. Counsel submits 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 December 28, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating her continuous unlawful residence in the United States during the requisite period. The director noted that the affidavits submitted could not be verified or were not credible. As an example, the director noted that the applicant provided an affidavit from [REDACTED] stating that he first met the applicant in 1981; however, the Service records indicate that [REDACTED] entered the United States in 1984. The director also questioned the applicant's statement that she had departed the United States, for Bangladesh, on May 3, 1987, and returned to the United States on June 1, 1987, noting that the record reflects that the applicant gave birth to a child, born pre-mature in Bangladesh, on May 10, 1987. The director questioned how the applicant was allowed to travel to Bangladesh with such an advanced pregnancy. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated February 4, 2008, 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 provide sufficient credible documentation to establish her continuous residence during the statutory period.

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 evidence, including letters and 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.

Affidavits & Letters

The applicant submitted the following:

1. Two affidavits from [REDACTED] dated April 27, 1991, and February 24, 2004, stating that the applicant resided at his home from 1981 until July 1984. Mr. [REDACTED] also states that during her stay at his residence the applicant "performed" as a housekeeper. The affiant, however, does not provide any details of the claimed relationship, such as under what arrangements the applicant, who was only 14 years of age in 1981, lived with him, and "performed" [worked] as a housekeeper at such a young age. The affiant also does not indicate whether the applicant attended school during these years.

2. An affidavit from [REDACTED], attesting to having known the applicant to have resided in the United States since November 1981. The affiant also states that he and the applicant met each other at various community and social events. The affiant however, does not state how he dates his acquaintance with the applicant, and whether and how frequently he had contact with the applicant since that time.
3. An affidavit from [REDACTED], attesting to having known the applicant to have resided in the United States since November 1987. Mr. [REDACTED], however, does not indicate how he dates his acquaintance with the applicant, and whether and how frequently he had contact with the applicant since that time.
4. An affidavit from [REDACTED] attesting that she has known the applicant since February 1987 and during that time she shared an apartment with the applicant, located at [REDACTED] Elmhurst, NY 11373. The affiant, however, does not provide any additional details of the claimed apartment sharing arrangement.

The applicant has submitted various affidavits attesting to the applicant's presence in the United States throughout the requisite period. Contrary to counsel's assertion, however, the documentation submitted by the applicant in support of her claim of continuous residence throughout the requisite period, is not credible. As noted above, the applicant provided an affidavit from [REDACTED] stating that he first met the applicant in 1981; however, the Service records indicate that [REDACTED] entered the United States on August 22, 1984. Mr. [REDACTED] therefore, cannot attest to having known the applicant in the United States prior to his entry.

Also, the applicant claims that she first entered the United States in November 1981, when she was 14 years old. However, the applicant does not submit any of her school records, nor does she provide an explanation as to why she is unable to provide her school records. In addition, the applicant does not provide any documentation whatsoever of how she sustained herself from 1981, the year of her claimed entry, until adulthood. For a number of years since her entry, at age 14 years old, the applicant would have had to have been provided for and cared for by an adult. Yet, no such documentation was provided.

In addition, there is considerable doubt surrounding the applicant's claimed travel to Bangladesh in May 1987. Based on the applicant's statement, she departed the United States, for Bangladesh, on May 3, 1987, and returned to the United States on June 1, 1987, after she gave birth to a child, born pre-mature in Bangladesh, on May 10, 1987. It is unlikely that the applicant would be allowed to travel to Bangladesh with such an advanced pregnancy. It is also noted that while the applicant indicated on her Form I-687 application that she departed the United States to visit her ailing mother, and she provided a letter from Biman Bangladesh Airlines, dated March 27, 1991, stating that she arrived in Dhaka on May 4th 1987, she indicated on her Biographic Information, Form G-325A, that she married in Dhaka, Bangladesh, on May 5, 1987. After giving birth to a pre-term baby she returned to the United States within 20 days. Yet, the applicant does not provide any details of her claimed travel to Bangladesh or her return to the United States.

The above inconsistencies, and lack of detail, cast considerable doubt on whether the applicant has been in the United States since November 1981 as she claims. 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 she continuously resided in the United States in an unlawful status during the requisite period.

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 she 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, she 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.