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U.S. Citizenship and Immigration Services

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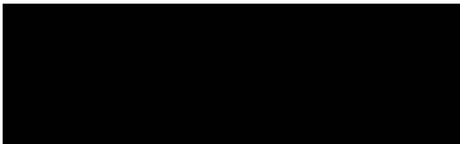
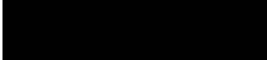
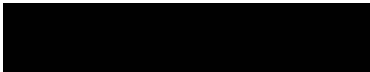
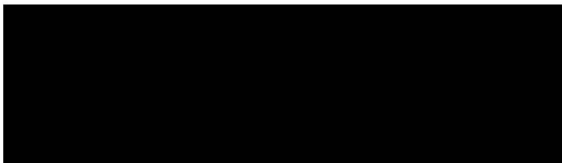


FILE:  MSC 03 205 60334 Office: NEW YORK Date: OCT 0 8 2008

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. 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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 the director "emphasized on some evidence that the respondent has no knowledge of its source, though apparently he is supposed to know in normal and circumstances. But in cases like this, when some one having no legal document, and with very little education are not in a position to inquire about it." Counsel argues that the director failed to evaluate this fact.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

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.

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.

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 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. 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 the following evidence:

- A notarized affidavit from [redacted], who indicated that he has known the applicant since 1981 and has remained on friendly terms with the applicant since that time.
- A notarized affidavit from [redacted] of Brooklyn, New York, who indicated that the applicant resided with him at [redacted], Brooklyn, New York from August 1980 to June 1987. The affiant asserted that the rent receipts and household bills were in his name.
- A notarized affidavit from of Brooklyn, New York, who indicated that he met the applicant at a social function in Brooklyn in October 1981. The affiant asserted, "[s]ince then we had conversation in different matters including our personal life."
- An undated Form G-56 advising the applicant to appear for a scheduled interview on July 16, 1993.

On June 21, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the evidence submitted did not establish his continuous unlawful residence in the United States since before January 1, 1982 through May 4, 1988. The applicant was advised that there were inconsistencies between his application, testimony, and documentation. Specifically: 1) at the time of his interview, the applicant indicated that he entered the United States on July 8, 1981; however, he claimed on his Form I-687 application to have resided in the New York since August 1980; 2) on his Form G-325A, Biographic Information, signed April 19, 2003, the applicant indicated that he resided in his native country, Bangladesh, from February 1952 to August 1987; and 3) the applicant had submitted a fraudulent Form G-56 (appointment letter) as the form lacked all the standard security features and the individual whose signature is on the form had not been in that branch for several years. The director determined that the applicant had provided a fraudulent Form G-56 documentation and, therefore, was inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act).

A review of the record fails to support the director's finding that the Form G-56 "lacked all of the standard security features of a genuine G-56, and was signed by a Chief Legalization Officer who has not been in that branch of the Service for many years." A denial of this application cannot be based upon the serious allegations of the director without evidence offered in support of those conclusions. Just as the unproven assertions of counsel are not evidence, neither are the unsupported conclusions of the director. *Cf. Matter of Obaigbena*, 19 I&N Dec. 533, 534 note (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, the AAO does not find the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant, in response, asserted that except for a short absence he has continuously resided in the United States since prior to January 1982. Regarding the Form G-325A, the applicant asserted, in pertinent part:

> I do not exactly remember in which connection I have said like this because it has got all no basis and it is not correct. I have not said this and I did nowhere meant like this and as such it is a clear misinterpretation of my case.
>
> There is a column in the original application to be filled up which says "Applicants last address outside the United States of more than one year" My assumption is that, I definitely have an address in Bangladesh and you have meant that and accordingly I have put my address along with year Nilphamari, Bangladesh, from 02-52 to 09-87. This clarification kindly be accepted as it is imperative and a matter of my knowledge and information.
>
> I have very clearly mentioned in my application and in other pages of the documents that I last time departed from the USA on 07-30-1987 and came back to USA on 09-30-1987. It proves legality of my case and no scope for any misinterpretation and hence it does not break in residency far in excess.

The applicant submitted:

- A letter dated July 3, 2006, from [redacted], general secretary of Bangladesh Society Inc., New York, who indicated that according to the society's records, the applicant had been a member since 1981.
- A notarized affidavit from [redacted]r. of Balaka Indian Restaurant, who indicated that the applicant was employed as a part-time kitchen helper from 1981 to 1985.
- A notarized affidavit from of Brooklyn, New York, who indicated he has known the applicant since 1981. The affiant asserted that he worked with the applicant at a construction company.

The director, in denying the application, determined that the letter from [redacted] was not clear, did not contain an address or telephone number and was not supported by any corroborating evidence. The director noted that according to the entity information at the Divisions of Corporations for the New York Department of State, Balaka Restaurant, Inc. did not come into existence until December 11, 1986. The director also determined that the letter from the Bangladesh Society Inc., lacked probative value as a certified copy of the original record of the applicant's membership was not provided. The director concluded that the evidence submitted did not prove by a preponderance of the evidence that the applicant had resided in the United States during the requisite period.

On appeal, counsel asserts that the applicant has been residing in the United States for a long time without any criminal record. Counsel requests a lenient view and humanitarian consideration of the applicant's claim. Counsel asserts:

> As regards to his address in Nilphamari he submits that he really believed that at that time as he did not have any status here.
>
> Regarding submission of the "fraudulent G-56" he submits that he did not have any knowledge of some documents submitted with his file as he, like many others, went to a gentleman Mr. [redacted], who was not a lawyer, he came to know later. He might have included some documents that [the applicant] did not know of and their source or origin. He believed that he had been taken care of case properly. He did not have any knowledge of submission of any fraudulent document nor he do it himself. He just paid like many others in the community did.

> In regard to working in the Balaka Restaurant he mentions that he worked in a Restaurant named Balaka and he told [redacted] of that. But he does not have any knowledge how and when [redacted] obtained any document from them. That restaurant might not be an incorporated entity.

The statements issued by the applicant and counsel have been considered. The AAO, however, does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as he has presented contradictory documents, which undermines his credibility. Specifically:

1. Counsel asserts that Balaka Restaurant "might not be an incorporated entity." However, counsel has not provided any evidence to support his assertion or to refute the director's finding. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

2. Counsel asserts that the applicant went to an individual named [redacted] to prepare his application and was not aware of some of the documents presented with his application. Counsel's assertion has no merit as the Form I-687 and Form I-485 applications do not indicate that anyone other than the applicant completed the application. No information is listed in items 48 and 50 of the Form I-687 and Part 5 of the Form I-485; items 48 and 50 and Part 5 request the name, address and signature of the person preparing the form. Furthermore, on his Form I-687 application, the applicant did not claim to have been employed at Balaka Restaurant during the requisite period.

3. letter failed to include the applicant's address at the time of the alleged employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to 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 previously noted, the employment letter from [redacted] failed to include a telephone number or address and, therefore, is not amenable to verification by the Citizenship and Immigration Services.

4. The AAO concurs and affirms the director's findings concerning the information the applicant indicated on the Form G-325A. The applicant, in affixing his signature on the Form G-325A, certified that the information he provided was *true* and *correct.* Furthermore, the applicant also indicated on the Form G-325A, that he was employed "abroad" from January 1978 to August 1987.

5. [redacted] and [redacted] indicated that they have known the applicant since 1981, but failed to state the applicant's place of residence during the period in question, provide details regarding the nature or origin of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence.

6. Neither counsel nor the applicant has addressed the director's finding regarding the contradiction between the affidavit from [redacted], who attested to the applicant's residence in the United States since August 1980 and the applicant's claim, at the time of his interview, to have entered the United States on July 8, 1981. It is noted that the applicant, on

his Form for Determination of Class Membership, indicated that he first entered the United States on July 8, 1981.

7. The letter from has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests. In addition, on his Form I-687 application, the applicant did not list any affiliation with a religious organization or association during the requisite period.

8. In his affidavit, indicated that he has known the applicant since 1981 and that he was a co-worker of the applicant at a construction company. The affiant, however, failed to state the applicant's place of residence during the period in question or provide details regarding the basis for his continuing awareness of the applicant's residence. Furthermore, the applicant, on his Form I-687 application, did not claim any employment in construction during the requisite period.

These factors tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 (BIA 1988).

Given the numerous credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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).

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

> *Continuous residence*. An alien shall be regarded as having resided continuously in the United States if:
>
> (1) No single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent*

> *reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

At item 35 of the Form I-687 application, the applicant indicated his absence from the United States since entry as July 1987 to September 1987. At item 16 of the Form I-687, the applicant indicated that he last entered the United States on September 30, 1987. In response to the Notice of Intent to Deny and on his Form for Determination of Class Membership, the applicant indicated that he departed the United States on July 30, 1987 and returned on September 30, 2007. This absence exceeds the 45-day limit for a single absence.

The applicant has specifically admitted that he exceeded the 45 day limit for a single absence from the United States when he traveled to Bangladesh from July 30, 1987 to September 30, 1987. Neither counsel nor the applicant has asserted that an emergent reason delayed his return to the United States. The applicant has failed to establish having resided in a continuous 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. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal

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