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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 217 61045

Office: NEW YORK

Date: JUL 18 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 (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, in particular because he spent some of that time in the United States in legal status with an H-2 visa.

On appeal counsel asserts that a brief and temporary legal status during the requisite period of continuous unlawful residence in the United States does not disqualify an applicant for permanent resident status under the LIFE Act. Counsel contends that the applicant has submitted sufficient proof of his continuous residence in the United States since before January 1, 1982.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. *See* 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.

The applicant, a native of Bangladesh who claims to have lived in the United States since March 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on May 5, 2003. At that time the record included the following documentary evidence of the applicant's residence in the United States during the years 1981-1988:

- A letter from [REDACTED], owner of the Indian Supermarket Inc. in Flushing, New York, dated November 20, 1981, stating that the applicant was employed at the supermarket during the time period of April 4, 1981 to November 17, 1981, five days a week, at a salary of \$175/week.

A letter from [REDACTED], the district manager of a Burger King in Jackson Heights, New York, dated February 16, 1982, stating that the applicant worked at the "store" during the time period of November 29, 1981 to February 10, 1982, 35-40 hours/week, at an hourly rate of \$4.35.

A letter from [REDACTED], president of Rajah Sahib Inc., an Indian restaurant at [REDACTED] in New York City, dated April 15, 1988, stating that the applicant had been working at the restaurant since July 5, 1982 as an assistant cook, six days a week, at a salary of \$250/week.

- An affidavit by [REDACTED], a resident of Astoria, New York, dated January 29, 2001, stating that he has known the applicant in the United States since 1981 and, to his personal knowledge, the applicant lived in Astoria from March 1981 to April 1996, after which he moved to Richmond Hill.

Two affidavits by [REDACTED], a resident of Astoria, New York, dated January 29 and 30, 2001, stating that he met the applicant at a Masjid, Islamic Center of America, in early 1981, has seen him there over the years at weekly prayers, and resided with the applicant at [REDACTED] in Astoria from March 1984 to April 1996, receiving contributions from the applicant to help pay the rent and other household bills.

An affidavit by [REDACTED], a resident of Brooklyn, New York, dated January 30, 2001, stating that he met the applicant in November 1981 at Burger King, where they worked together.

Some additional documentation was submitted at the time of and following the applicant's interview for LIFE legalization at the New York District Office on July 29, 2004, including:

Another letter from [REDACTED], the district supervisor of Burger King in Jackson Heights, New York, dated July 13, 2004, restating that the applicant worked at a Burger King in Jackson Heights from November 29, 1981 to February 10, 1982, at which time he was "released" because he failed to provide a valid social security number.

An affidavit by [REDACTED], a resident of Ozone Park, New York, dated July 29, 2004, stating that he went to meet the applicant at [REDACTED] in Astoria when he first arrived in the United States in March 1981, and has remained friends with him over the years.

- Another affidavit by [REDACTED], a resident of Astoria, New York, dated September 20, 2004, restating that he has known the applicant since 1981, that they roomed together from March 1984 to April 1996 at [REDACTED] in Astoria, and that the applicant shared rental and other household bills.
- A photocopied airline ticket indicating that the applicant flew from Bangladesh via London to New York on November 20-21, 1987.

On August 8, 2006 the director issued a Notice of Intent to Deny (NOID). Citing the applicant's testimony at his interview for LIFE legalization on July 29, 2004, and a sworn statement dated January 29, 2001, indicating that he traveled to Bangladesh on October 8, 1987 for a six-week stay and returned to the United States with an H-2 visa valid until May 20, 1988, the director concluded that the applicant was in legal status for six months during the statutory period and therefore did not qualify for adjustment of status under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant asserted that the H-2 was not a valid visa, because he had been residing in the United States illegally, and therefore it did not interrupt his unlawful residence in the United States.

On October 19, 2006 the director denied the application for the reasons stated in the NOID.

On appeal counsel asserts that the director's decision was erroneous because an applicant for legalization under the LIFE Act is not disqualified by a short-term period of legal status during the requisite statutory period of continuous unlawful residence in the United States. According

to counsel, the evidence previously submitted by the applicant is sufficient proof of his continuous residence in the United States from before January 1, 1982 through May 4, 1988.

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 AAO agrees with counsel that the basis on which the director found the applicant ineligible for LIFE legalization was incorrect. Nevertheless, the issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

To make this determination the AAO will examine the documentation submitted by the applicant, beginning with the letters from the three businesses where the applicant claims to have worked during the 1980s. Two of the three letters appear to be fraudulent, as evidenced by (1) a telephone number on the letter from the Indian Supermarket Inc. in Flushing, New York, with an area code of (212) – a Manhattan area code; and (2) a telephone number on the letter from Burger King, dated February 16, 1982, with an area code of (718), which was not created until 1984. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition to the appearance of fraud, both of the foregoing letters, as well as the other employment letters from the Indian restaurant Rajah Sahib Inc. in 1988 and Burger King (second letter) in 2004, fail to comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i). In particular, they did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, did not indicate whether such records are available for review, and (with the exception of the Indian restaurant) did not describe the applicant's duties. For the reasons discussed above, the AAO determines that the employment letters have little or no probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the 1980s.

As for the affidavits in the record – dating from 2001 and 2004 – from acquaintances who claim to have worked with, resided with, or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in every case since 1981 – the affiants provide remarkably little information about his life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the

applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Finally, while the airline ticket does indicate that the applicant flew to the United States in 1987, it does not demonstrate that he resided in this country at that time, much less in the years before that.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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