



U.S. Citizenship
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FILE:



Office: NEW YORK

Date: **MAY 20 2008**

consolidated herein]
MSC 02 225 63814

IN RE:

Applicant:



PETITION: 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. 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 applicant was represented in this proceeding by the attorney [REDACTED] of Brooklyn, New York. On April 7, 2008, however, [REDACTED] was convicted in federal district court of a crime involving the submission of fraudulent documentation in an immigration proceeding, in violation of 18 U.S.C. § 1546(a) and (b). On May 7, 2008 [REDACTED] was suspended from the practice of law before the Board of Immigration Appeals (BIA). Therefore, [REDACTED] is also suspended from practice in all matters before U.S. Citizenship and Immigration Services. Accordingly, the applicant in this proceeding is considered at present to be self-represented.

The director denied the application on the grounds that the applicant failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from then until May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal, the applicant submits a statement and affidavits from two acquaintances.

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, and 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).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1) as follows: “An alien shall be regarded as having resided continuously in the United States if 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.”

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States.” The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” 8 C.F.R. § 245a.16(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. 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 resided in the United States continuously since September 1981, filed his current application for permanent resident status under the LIFE Act (Form I-485) on May 13, 2002. At that time the record included the following evidence of the applicant's residence and physical presence in the United States during the years 1981-1990, and one departure from the country in 1987:

An affidavit from [REDACTED] owner of the [REDACTED] contracting company, dated November 29, 1990, stating that the applicant had worked for the company as a construction worker at \$3.00/hour from October 1981 to December 1982.

- A sworn statement from [REDACTED], owner of [REDACTED] Contracting, dated January 30, 1991, certifying that the applicant worked for the company as a construction worker at \$4.50/hour from January 1983 to December 1985.

An affidavit from [REDACTED], owner of [REDACTED] Contracting, dated December 10, 1990, certifying that the applicant had worked for the company at the rate of \$5.50/hour from January 1986 to November 1990.

- An affidavit from [REDACTED] dated December 27, 1990, stating that he had known the applicant since about October 1981, when he began working for the [REDACTED] (sic) Contracting Company, and that they had been close personal friends since then with much social interaction over the years.
- A sworn statement from [REDACTED] of Brooklyn, New York, dated January 30, 1991, stating that he had known the applicant since 1981 and that the applicant made an emergency trip to Bangladesh to visit his family in June 1987, returning to the United States illegally in July 1987.

A sworn statement from [REDACTED], vice president of the Islamic Council of America Inc. in New York City, dated June 18, 1991, stating that he had known the applicant since 1981 and that the applicant attended prayer services every Friday.

- An undated letter from the president of [REDACTED] Travel & Tours stating that the applicant had been issued a TWA ticket for travel from JFK International Airport to Bangladesh on June 12, 1987.

A letter dated December 30, 1992 from the Accounting Coordinator, Passenger Records, of TWA, advising the applicant that it could not comply with his request for copies or information about a previously issued ticket because its records for the time period in question had been routinely destroyed.

On April 7, 2006, the director issued a Notice of Intent to Deny (NOID), advising the applicant that the evidence of record failed to establish that he entered the United States before January 1, 1982, that he was continuously resident in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant indicated that he does not have any primary documentation of his stay in the United States during the statutory period in the 1980s. Affidavits were submitted from three naturalized U.S. citizens of Bangladeshi origin, all dated April 24, 2006, two of whom claim to have known the applicant in Brooklyn, New York, since 1984 and the third of whom claims to have known the applicant in Brooklyn since 1987. The

affiants provided the following information about a trip the applicant took to Bangladesh in 1987, which the applicant stated, under oath, had a duration of 40 days:

- [REDACTED] states that he accompanied the applicant on June 10, 1987 to [REDACTED] Travel & Tours in Brooklyn, New York, to purchase air tickets to Bangladesh on TWA with a departure date of June 12, 1987.
- [REDACTED] who states that he was the applicant's roommate from January 1984 to December 1990 at [REDACTED] in Brooklyn, New York, indicates that he accompanied the applicant to JFK Airport for his departure to Bangladesh via TWA on June 12, 1987, and that the applicant returned to the United States without inspection through Buffalo, New York, on July 22, 1987, arriving at their Brooklyn apartment by taxi.

Asab Uddin states that he also accompanied the applicant to JFK Airport for his flight to Bangladesh, and that he next saw the applicant in the last week of July 1987, after his return to the United States.

Submitted along with the affidavits were photocopies of two notifications pertaining to the applicant's LIFE legalization interviews in 2004 and pages from his passports issued between 1990 and 2001, in addition to some previously submitted documentation.

On January 5, 2006, the director denied the application on the ground that the documentation submitted by the applicant failed to overcome the reasons for denial as stated in the NOID. The director cited information provided by the applicant that two of his children were born in Bangladesh on April 20, 1982 and March 22, 1988, respectively, which the director implied was inconsistent with the applicant's statement that his wife never visited the United States.

On appeal, the applicant asserts that the birthdates of his two children born in Bangladesh in 1982 and 1988 are consistent with his statements about his initial date of entry into the United States in 1981, his trip home in 1987, and his wife never having visited the United States. The first child, born on April 20, 1982, would have been conceived around July 1981, which was two months before the applicant states that he first entered the United States in September 1981. The second child, born on March 22, 1988, would have been conceived around June 1987, which is the month the applicant states that he traveled to Bangladesh for a visit.

The applicant submits six postmarked envelopes addressed to the applicant in the United States from individuals in Bangladesh. He also submits two additional affidavits, dated May 18 and May 22, 2006, from Bangladeshi natives residing in Brooklyn, one a naturalized U.S. citizen and the other a legal permanent resident, who claim to have known the applicant since 1981 and provide the following information:

[REDACTED] states that the applicant contacted him in September 1981 in search of a job, and he was able to secure part-time work for the applicant

through his employer – the “News Stand of Citywide, Inc.” at the Euclid and Eastern Parkway subway stations – as a part-time newspaper hawker from October 1981 up to 1994.

states that he met the applicant in October 1981 at the [REDACTED] located at [REDACTED] in Brooklyn, that they continued to shop at the same grocery store until 1987, at which time they both began patronizing another store, the [REDACTED] located at [REDACTED] in Brooklyn.

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 from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

With respect to the six letter envelopes submitted on appeal, addressed to the applicant in Brooklyn, three are clearly postmarked in the 1990s (two in 1991 and one in 1990). The other three envelopes bear postmarks in which the years appear to have been altered to read 1981, 1983, and 1987. The inauthenticity of these postmark dates, which is evident in the smaller fonts and misalignment of the year numerals next to the day and month figures, is amplified by the fact that each of the three envelopes has Bangladeshi stamps affixed that come from a series that was printed during the years 1989-1999. *See Scott 2006 Standard Postage Stamp Catalogue*, Vol. 1, p. 664. Thus, none of the envelopes represents credible evidence of the applicant’s residence in the United States during the years 1981-1988. Moreover, 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).

With respect to the employment affidavits in the record – from the owners of the A. Rahim contracting company (1990), [REDACTED] Contracting (1991), and [REDACTED] Contracting (1990) – none of them comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i). The nearly identically worded affidavits from A [REDACTED] and [REDACTED] Contracting did not provide the applicant’s address at the time of employment, did not detail the applicant’s duties (except to describe him generally as a “construction worker”), did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. Similarly, the third affidavit from [REDACTED] Contracting did not provide the applicant’s address at the time of employment (instead providing the applicant’s new address as of December 1990), did not identify the applicant’s duties (or even a job title), did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. In view of these crucial omissions on all three affidavits, and the fact that two of the three affiants do not claim to have employed or even known the affiant before 1983 and 1986, respectively, the AAO concludes that the employment affidavits have little probative value as evidence of the applicant’s continuous residence in the United States from before January 1, 1982 through May 4, 1988.

In a similar vein, the sworn statement from [REDACTED] vice president of the Islamic Council of America Inc., does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The statement of [REDACTED], dated June 18, 1991, is vague about when the applicant began attending services, providing only a year (1981) without further detail. The statement does not state where the applicant lived at any point in time between 1981 and 1991. The statement does not state exactly how [REDACTED] met the applicant in 1981, and whether the information about the applicant attending services every Friday since then is based on Mr. [REDACTED]'s personal knowledge, church records, or hearsay. Since [REDACTED]'s statement does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the statement has little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The other affidavits in the record offer only spotty information about the applicant considering the amount of time the affiants claim to have known him. Furthermore, only four of the remaining affiants – [REDACTED] (1990), [REDACTED] (1991), [REDACTED] (2006), and [REDACTED] (2006) – claim to have known the applicant before January 1, 1982. Of these four affiants, only one ([REDACTED] in 2006) indicated where the applicant was living in 1981 and subsequent years. The affiants described relatively little about the applicant's life in the United States, and the nature and extent of their interaction with him over the years. One of the affiants ([REDACTED] in 2006) stated that he helped get the applicant part-time work as a newspaper hawker from 1981 to 1994, but this employment was not listed by the applicant on the Form I-687, Application for Status as a Temporary Resident, he prepared in November 1990 in connection with his application for class membership in the *CSS v. Meese class action lawsuit*.¹ Lastly, none of the four affiants discussed above, or any of the others with affidavits in the record, submitted any documentary evidence of their personal relationship with the applicant – such as photographs, letters, and the like – and none of them submitted any documentation of their own identity and presence in the United States during the 1980s. Based on the foregoing analysis, the AAO concludes that the affidavits of record have little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

In view of the evidentiary shortcomings discussed above, and the clearly fraudulent postmarks on three of the envelopes submitted on appeal, 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, and that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required under 1104(c)(2)(B)(i)

¹ *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). 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.