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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date:

MAY 30 2008

MSC 02 124 60061

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:

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that 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. This decision was based on the director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, the applicant states that he has submitted sufficient evidence to establish that he entered the United States in 1981 and, except for a short break, remained here continuously since that time. The applicant stated that the break occurred when he visited Bangladesh and became ill. The applicant provides additional documentation in support of the appeal.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). "Continuous unlawful 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.]

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's statement on his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on November 10, 1987, and during his July 7, 2006, interview for adjustment of status under the LIFE Act. The applicant stated that he traveled to Bangladesh in July 1985 to visit family and returned to the United States on September 25, 1985.

In a Notice of Intent to Deny (NOID) dated July 8, 2006, the director informed the applicant that his absence from the United States during 1985 interrupted his continuous residence in the United States. The applicant was also informed that information provided on his Form G-325A, Biographic Information, submitted in conjunction with his Form I-485, Application to Register Permanent Resident or Adjust Status, and which he signed under penalty of perjury on January 28, 2002, was inconsistent with his testimony at the interview and with information provided on his Form I-687 application. On his Form G-325A, the applicant stated that his last address outside of the United States was in Bangladesh, where he lived from 1963 until September 1985.

In response to the NOID, the applicant submitted a statement in which he stated at one point that he entered the United States before December 1, 1982, and at another that he entered prior to January 1982. The applicant stated that he was in Bangladesh from July 28 to September 1985, and that during that trip, he became seriously ill and was hospitalized. The applicant offered to submit documentation attesting to his illness and hospitalization, but provided no additional documentation in response to the NOID. The

applicant also stated that he was born in Bangladesh in 1963 and that he traveled there in 1985. Thus, when he entered the dates on his Form G325A, the "two events may be misleading." The applicant claimed, "I have never and no where mentioned that I was in Bangladesh from 1963 to 1985."

On appeal, the applicant stated that he misunderstood the columns on the Form G-325A, and again stated that the dates he entered referred to the date of his birth and the date of his visit to Bangladesh. The applicant also submitted a copy of an April 28, 2006, statement from [REDACTED] certifying that the applicant came to Bangladesh on a visit in August 1985, and that he suffered from viral hepatitis (A). [REDACTED] stated that he treated the applicant as a family doctor and advised complete bed rest for four weeks. He further stated that the applicant was completely cured after four weeks of rest and treatment.

The applicant claimed that during his visit to Bangladesh, he became seriously ill and had to be hospitalized. However, he submitted no documentation to verify that he was hospitalized during his visit. While the statement from [REDACTED] states that he advised bed rest for the applicant, he does not state that at any time, the applicant's condition was so severe that it required hospitalization. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant submitted no objective and independent evidence, such as copies of his medical or hospital records, to document his treatment for a debilitating illness during his visit to Bangladesh in 1985. The statement from [REDACTED] without supporting documentation to establish the dates that he treated the applicant and the treatment that he provided, is insufficient to meet the applicant's burden of proof.

Accordingly, the applicant has failed to establish that his absence from the United States in 1985 was due to emergent reasons. Therefore, his two-month stay in Bangladesh during 1985 would have interrupted his continuous residence in the United States.

Additionally, the directions on the Form G-325A clearly directs the applicant to identify his last address outside of the United States of more than one year, and lists blocks to identify the month and year of the beginning of that residency and the month and year it ended. Nothing on the Form G-325A suggests that the applicant enter the date he last visited outside the United States. Given other inconsistencies in the record, including his explanation for his extended visit in 1985 and other inconsistencies discussed below, the applicant's statement as to the reasons he stated on his Form G-325A that he lived in Bangladesh from 1963 to 1985 is not credible.

Beyond the decision of the director, the applicant has not established that he resided in the United States in an unlawful status from prior to January 1, 1982, through May 4, 1988.

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 or petitioner 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 or petition.

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

During his July 7, 2006, interview, the applicant stated that he first arrived in the United States in June 1981. On his Form I-687, application, the applicant stated that he lived at 143-10 Hillside in Jamaica, Queens, New York from December 1981 to the date of his Form I-687 application. The applicant further stated that he had worked as a construction helper from May 1982 to the date of his Form I-687 application.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant submitted the following evidence:

1. A March 29, 1993, notarized statement from [REDACTED] in which he certified that the applicant resided with him at [REDACTED] in Jamaica, Queens, New York from December 1, 1981, to September 31, 1985. [REDACTED] stated that the applicant “paid house rent and other utility [b]ills proportionately.” [REDACTED] did not state his present address and did not provide any other contact or identifying information. The applicant submitted no documentation to corroborate that either he or [REDACTED] lived at the address during the stated time frame.
2. A January 7, 1988, sworn statement, certifying that the applicant was an employee of Shaju Deli in Brooklyn, New York from January 1, 1982, to December 31, 1984, as a full time helper. The signature on the statement is illegible, and the individual signing the document did not state that he or she was certifying the applicant’s employment on behalf of the company, his or her authority for providing the information, or the source of the information that he or she relied upon in providing the information. Further, the statement conflicts with that of the applicant on his Form I-687 application, in which he stated that he worked as a construction helper from May 1982. On the Form I-687 application, the applicant did not identify Shaju Deli as an employer.

In his August 2, 2006, response to the director’s NOID, the applicant stated that because of his illegal status, he had no documents to rent a house or bear the utility bills in his name. The applicant submitted no documentation to verify his residence or that of any one with whom he lived during the qualifying period.

While affidavits in certain cases can effectively meet the preponderance of evidence standard, the statements submitted by the applicant are not credible or probative. Mr. [REDACTED] provided no information by which his statement could be verified. Further, the letter attesting to the applicant's employment fails to adequately identify the individual providing the information. Additionally, if the statement is designed to serve as a letter of employment, 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 statement provided by the applicant does not indicate whether the information about the applicant's employment was taken from company records or identify the applicant's address at the time of his employment. Further, the applicant did not identify Shaju Deli as an employer during the qualifying period and stated that he worked as a construction helper throughout that period. The applicant submitted no independent objective evidence, such as pay stubs, to resolve the discrepancies in his evidence.

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.12(e), 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 during the requisite period.

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. Further, he has failed to establish that his extended absence from the United States in 1985 was due to emergent reasons. Given this, he 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).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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