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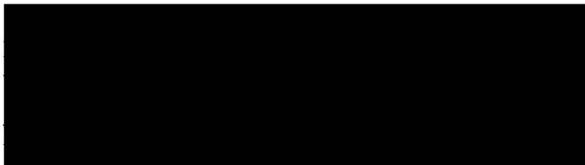
IN RE: Applicant:



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 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 entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director did not give proper weight to the evidence submitted by the applicant in support of his claim. Counsel asserts that the evidence is sufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

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).

“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.” (Emphases added.)

“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.” (Emphasis added.) 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.” (Emphasis added.) 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 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 October 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on December 28, 2001. As evidence of his residence in the United States during the years 1981-1988, the applicant submitted a series of affidavits. They included the following:

- An affidavit from [REDACTED], a resident of Astoria, New York, dated October 8, 2001, stating that he is personally aware that the applicant resided at the following addresses in the United States: [REDACTED] Woodside, Queens, New York, from October 1981 to January 1985; [REDACTED], Jackson Heights, New York, from February 1985 to October 1988; [REDACTED], Woodside, New York, from November 1988 to March 1991; and [REDACTED], Sunnyside, New York, from May 1991 to the present (October 2001), and that he frequently visited the applicant at his residence in New York, except for the time the applicant resided in Pompano Beach, Florida, for about one month and when he was absent from the United States in the months of June and July 1987, when he visited his family in his native country.

- An affidavit from [REDACTED], a resident of Woodside, New York, dated October 10, 2001, stating that he had personal knowledge that the applicant resided at the following addresses in the United States: [REDACTED] Woodside, Queens, New York, from October 1981 to January 1985; [REDACTED] Jackson Heights, New York, from February 1985 to October 1988; [REDACTED] Woodside, New York, from November 1988 to March 1991; and [REDACTED], Sunnyside, New York, from May 1991 to the present (October 2001), and that as a close acquaintance he regularly visited the applicant's residence.

An affidavit from [REDACTED] a resident of Long Island City, New York, dated October 15, 2001, stating that he is personally aware that the applicant was physically present in the United States from October 1981 to March 1991, because he always visited the applicant at his residence, and the longest time he did not see the applicant was in the months of June and July 1987, when the applicant visited his family in Bangladesh.

An affidavit from [REDACTED] a resident of Sunnyside, New York, dated October 1, 2001, stating that he had personal knowledge that the applicant has been residing in the United States since October 1981, that they have been good friends, that he regularly visited the applicant at his residences in Woodside and Jackson Heights, New York, during the period of October 1981 to January 1985, and that they have regularly visited each other's residence except for the months of June and July 1987, when the applicant visited his country to see his ailing mother who died at the time he was there.

An affidavit from [REDACTED] a resident of Irvington, New York, dated October 4, 2001, stating that the applicant was her "household worker" from November 1981 to December 1986, and that his duties included cleaning house, washing clothes, ironing, dusting, vacuuming, running errands, cooking for the family and other related household duties.

- An affidavit from [REDACTED], a resident of Jackson Heights, New York, dated October 31, 2001, stating that he had known the applicant since 1987, when the applicant used to work as an assistant to a street vendor located at [REDACTED], New York, during the period of January 1987 to March 1991, and that during this time his own vending operation was located next to the vendor for whom the applicant used to work.

In a Notice of Intent to Deny (NOID), dated April, 14, 2007, the director indicated that the applicant had not submitted sufficient evidence of his continuous unlawful residence in the United States during the statutory period required for adjustment of status under the LIFE Act.

The director noted that the affidavits submitted by the applicant were neither credible nor amenable to verification. The applicant was granted 30 days to submit additional evidence.

In response, counsel submitted letters from the affiants attesting to their residence and identity. Counsel submitted copies of the affiants' identity documents and contact information. Counsel also submitted one additional document, specifically;

- An affidavit from [REDACTED], a resident of Long Island City, New York, dated May 10, 2007, stating that she has known the applicant for over 26 years, that she first met him in Manhattan in 1981, that the applicant was her favorite street vendor for accessories and lively conversation, that they have kept their friendship to this day, and that she has come to regard the applicant as a brother.

On May 26, 2007, the director issued a Notice of Decision denying the application. The director indicated that the response and the additional documentation submitted by the applicant were insufficient to overcome the grounds for denial as stated in the NOID.

The applicant filed a timely appeal. On appeal, counsel asserts that the director did not give proper weight to the evidence submitted by the applicant in support of his claim despite the fact that the applicant submitted contact information and identity documents of the affiants. Counsel resubmitted copies of documents already in the record.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since October 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

The affidavits by [REDACTED], and [REDACTED], dated in October 2001, provide some basic information about the applicant, such as the addresses he claims in the United States during the 1980s, but few details about the applicant's life in the

United States and his interaction with the affiants over the years they supposedly have known one another and socialized together. The information in the affidavits is not very personal in nature, and could just as easily have been provided by the applicant. 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 limited 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.

As for the affidavits from [REDACTED] and [REDACTED], all claiming to have known, worked with, or been acquainted with the applicant since the 1980s, they have minimal information about the applicant. The affiants provide few details about the applicant's life in the United States and their interaction with him over the years. The affidavits are not 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. Mr. [REDACTED] only claims to have known the applicant beginning in 1987, and [REDACTED] did not provide information about the applicant beyond 1986. In view of these substantive shortcomings, the AAO finds that the affidavits have limited 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.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and 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, 8 U.S.C. § 245A(a)(2)(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.