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FILE:



MSC 03 248 60041

Office: GARDEN CITY, NEW YORK

Date SEP 03 200

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 Garden City, New York. 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 maintained continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient credible evidence to establish his eligibility to adjust status under the LIFE Act. Counsel submits additional affidavits attesting to the applicant's residence in the United States during the 1980s.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and 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."

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 and citizen of Bangladesh, who claims to have resided in the United States since 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 5, 2003.

In a Notice of Intent to Deny (NOID), issued on June 17, 2007, the director cited the applicant’s Form I-687, Application for Status as a Temporary Resident, dated December 15, 1992, in which the applicant stated that he left the United States and traveled to Canada from July 1987 to October 1987. The director noted that the absence was in excess of a single absence of 45 days allowed in the regulation. The director concluded that this absence interrupted the applicant’s “continuous residence” in the United States during the statutory period of January 1, 1982 through May 4, 1988 and that the applicant has shown no emergent reasons for such a lengthy absence. The applicant was granted 30 days to submit additional evidence that he fulfilled the continuous residence requirement for legalization under the LIFE Act.

The applicant failed to respond to the NOID and on July 23, 2007, the director denied the application, based on the reasons stated in the NOID.

On appeal, counsel submitted additional affidavits attesting to the applicant’s residence in the United States in the 1980s. Neither the applicant nor the affiants provided emergent reasons why the applicant could not have returned from his trip to Canada to the United States within 45 days.

It is undisputed that the applicant’s three-month absence from the United States - extending from July 1987 to October 1987 - far exceeded the 45-day maximum prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). Absences of such duration interrupt an alien’s continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term “emergent reasons” is not defined in the

regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means “coming unexpectedly into being.”

The applicant stated on the Form I-687 dated December 15, 1992, that he traveled to Canada to visit friends from July 1987 to October 1987. The applicant has submitted no detailed information why the absence lasted so long. Nor has he explained what sort of “emergent reasons” prevented his return to the United States within 45 days.

Based on the evidence in the record, the AAO concludes that the applicant has failed to establish that “emergent reasons,” within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his timely return to the United States from Canada in 1987.

Thus, 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, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of 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.