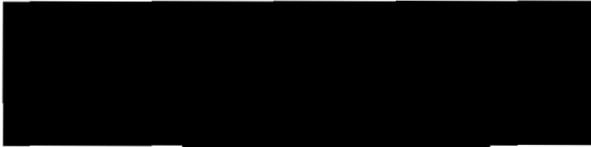


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



42

FILE:



Office: GARDEN CITY

Date:

JAN 05 2009

MSC 02 106 63853

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.

for John H. Vaughan
John F. Grissom, Acting 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 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 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 the applicant asserts that the director did not properly evaluate the evidence of record and did not give due weight to the affidavits. The applicant asserts that the evidence submitted is sufficient to establish that he resided in the United States continuously in an unlawful status during the requisite period for LIFE legalization.

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 January 14, 2002.

In a Notice of Intent to Deny (NOID), dated May 17, 2007, the director discussed various inconsistencies and deficiencies in the evidence of record which cast doubt on the applicant’s claim to have continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant filed a timely response to the NOID, offering explanations for some of the evidentiary deficiencies and inconsistencies cited in the NOID. The applicant submitted one additional affidavit as evidence of his residence in the United States during the period required for adjustment of status under the LIFE Act.

On appeal, the applicant asserts that the director failed to properly evaluate the evidence, and failed to explain why the affidavits were insufficient to establish that he resided continuously in

the United States from before January 1, 1982 through May 4, 1988. No new documentation is submitted with the appeal.

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.

The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982 and resided continuously in an unlawful status through May 4, 1988, consists of the following:

Two employment letters from former employers: (1) G.K. Contracting Company in New York City, stating that the applicant was employed from November 3, 1981 to May 31, 1982, and (2) Indian Super Market in Flushing New York, stating that the applicant was employed as a cashier from June 1982 to February 1989.

A letter from [REDACTED], president of Islamic Council of America Inc. in New York City, stating that the applicant was a "good and reliable Muslim," a member of the community, and had been attending mosque since 1981.

A notarized letter and an affidavit from former roommates, [REDACTED] and [REDACTED], attesting that they resided with the applicant in New York from November 3, 1981 to May 31, 1982, and from June 1982 to February 1989, respectively.

- An affidavit and a notarized letter from acquaintances, [REDACTED] and [REDACTED], attesting that they knew the applicant had resided in the United States since 1981.

An affidavit from [REDACTED], a resident of Canada, attesting that the applicant visited Canada from June 5, 1987 to June 30, 1987, and that the applicant stayed with him during the visit.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each affidavit and letter in this decision.

The employment letters from [REDACTED], manager of G.K. Contracting Company in New York, and from [REDACTED] president of Indian Super Market, in Flushing New York, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i). Neither letter stated the applicant's address during the period of employment. While [REDACTED] indicated that the applicant was employed as a cashier from June 1982 to February 1989, [REDACTED] did not describe the applicant's duties, but merely stated that the applicant worked on part-time basis with the company. Neither letter indicated whether the information was taken from company records, and neither indicated whether such records are available for review. Nor were the letters supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the letters are not persuasive evidence that the applicant resided in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The letter from the president of Islamic Council of America Inc. in New York City 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 letter from [REDACTED], dated January 16, 1990, vaguely stated that the applicant was a member of the Islamic community and had been attending the mosque often since 1981, but did not state exactly when the applicant's membership began or where the applicant lived at any point in time between 1981 and 1988, did not indicate how and when Md. [REDACTED] met the applicant, and did not state whether the information about the applicant's membership and attendance at the mosque was based on [REDACTED] personal knowledge, the Islamic Council's records, or hearsay. Since the letter did not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. The letter is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the other notarized letters and affidavits in the record – dating from 1990, 2001, and 2007 – from acquaintances who claim to have 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 authors. Considering the length of time they claim to have known the applicant – in many cases since 1981 – the authors provided remarkably little information about his life in the United States, such as where he worked, and their interaction with him over the years. Nor are the affidavits and letters accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the letters and 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.

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.