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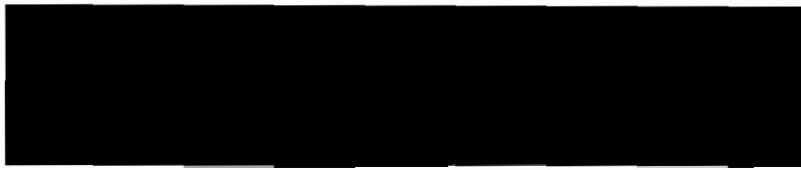
IN RE: Applicant:



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

The district director denied the application on the ground that the applicant failed to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief and a letter.

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).

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.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit. While affidavits “may” be accepted (as “other relevant documentation”) [*See* 8 C.F.R. § 245a.2(d)(3)(vi)(L)] in support of the applicant’s claim, the

regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's unlawful continuous residence during the requisite time period.

While there is no specific regulation that governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

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 filed his Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on February 7, 2003. In support of his application, the applicant submitted:

1. An affidavit, dated December 10, 1990, from [REDACTED] of Brooklyn, New York, stating that he had known the applicant since an unspecified date in 1981, and that the applicant had left the United States to visit family from August 1987 to October 1987.
2. Two affidavits, dated December 15, 1990, and April 26, 1991, from [REDACTED] of Brooklyn, New York, stating that he had known the applicant since September 1981, and that the applicant had left the United States to visit family from August 1987 to October 1987.
3. A letter, dated December 7, 1990, from [REDACTED] of [REDACTED] General Contracting Corp., Brooklyn, New York, stating that the applicant had worked as a laborer from April 1982 to July 1987, and that he was paid in cash.
4. A letter, dated December 7, 1990, from (signature illegible) Big Apple Construction Company, Brooklyn, New York, stating that the applicant had been employed since November 1987.

5. A letter, dated February 26, 1988, from the president and secretary of Masjid Arafat & Muslim Center, Inc., Brooklyn, New York, stating that the applicant had contributed towards the development of the mosque since January 1984.

While not required, the affidavits (Nos. 1 and 2, above) are not accompanied by proof of identification or any evidence that the affiants resided in Brooklyn during the relevant period. The affidavits also lack details regarding the affiants' relationships with the applicant, how they date their acquaintances with the applicant, or how often and under what circumstances they had contact with the applicant during the requisite period. They provide no basis for concluding that the affiants actually had direct and personal knowledge of the events and circumstances of the applicant's residence in the US during the requisite period. Furthermore, the employment letters (Nos. 3 and 4) do not fulfill the requirements as described in 8 C.F.R. § 245a.2(d)(3)(i). They do not identify the exact periods of employment; show periods of layoff; state the applicant's specific duties; declare whether the information was taken from company records, 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. As such, the affidavits and letters can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

In a Notice of Intent to Deny (NOID), the district director notified the applicant that he had failed to provide sufficient documentation to establish his continuous unlawful residence in the United States during the requisite time period. The district director noted that when asked where he had resided in the United States since 1981, the applicant stated that he could not remember since it was a long time ago, but wrote on a piece of paper "Shafiq Alam" and stated that he (Mr. Salam) had no phone number.

The district director granted the applicant 30 days to submit additional evidence and/or provide a rebuttal to the NOID. In response, the applicant submitted the following additional documentation:

6. A letter, dated July 6, 2004 from [REDACTED] of Brooklyn, New York, stating that the applicant came to the United States in 1981, and that they happened to meet each other during the time of prayer in the mosque. Mr. [REDACTED] further states that the applicant was his roommate at [REDACTED], Ozone, New York, from September 1981 until December 1985.
7. Affidavits, notarized in October and November 2005, from acquaintances - [REDACTED] and [REDACTED]. Mr. [REDACTED] states that he met the applicant in a mosque in July 1982; [REDACTED] states that he met the applicant at a McDonald's in Brooklyn in 1982; and, [REDACTED] states that he met the applicant in November 1982 when the applicant came to his house in Brooklyn. Each affiant states that he knew the applicant came to the United States before 1982 "because [the applicant] told me."

8. A letter, dated October 21, 2005, from (signature illegible) the Bangladesh Society Inc., New York, stating that the applicant had been well acquainted with the organization since an unspecified date in 1982.

Similar to the previously noted affidavits (Nos. 1 and 2, above), the affidavits (Nos. 6 and 7) do not state in any detail how the affiants first met the applicant, what their relationship with the applicant was, or how frequently and under what circumstances they saw the applicant during the requisite period. The affidavits are devoid of any details that would lend credibility to the claimed relationships – nearly a quarter of a century later - and provide no basis for concluding that the affiants actually had direct and personal knowledge of the events and circumstances of the applicant residence in the US during the requisite period.

On July 11, 2006, the district director denied the application for the reasons stated in the NOID. The district director noted that at the time of his interview on May 11, 2004, required in connection with his application, the applicant had stated under oath that he couldn't remember where he had lived or the names of anyone since it was such a long time ago.

The applicant filed a timely appeal from the denial decision on August 1, 2006. On appeal, counsel for the applicant asserts that the applicant has submitted "documents and affidavits" from individuals who have personal knowledge of the applicant's residency in the United States prior to January 1982, and that the Citizenship and Immigration Services (CIS) "officer made errors in considering all the documents submitted...."

The issue in this proceeding is whether the applicant has furnished sufficient 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 concludes that he has not.

The applicant has not provided any contemporaneous evidence for the years 1982-1988 that demonstrates his residence in the United States during that time. The lack of detailed documentation corroborating the applicant's claim of continuous residence and continuous physical presence for the requisite time period detracts from the credibility of his claim.

In accordance with 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and its amenability to verification. Given the applicant's reliance upon minimal documentation with little probative value, he has failed to establish his continuous residence in an unlawful status in the United States from before January 1, 1982, through May 4, 1988.

Thus, the applicant has failed to establish his entry into the United States prior to January 1, 1982, and his continuous unlawful residence in the United States for the time period specified in 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.

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