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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date:

JUL 09 2008

consolidated herein]
MSC 02 232 61809

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.

for 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 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 properly consider the evidence in the record and reiterates the applicant's claim to have resided in the United States continuously in an unlawful status since 1981.

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 March 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 20, 2002. As evidence of his residence in the United States during the years 1981-1988 the applicant submitted a series of letters and affidavits which had originally been filed with previous applications for temporary resident status (Form I-687s) in 1991 and 2001. They included the following:

- A letter from the managing director of Charge & Travel, Inc. in Long Island City, New York, dated October 4, 1990, stating that the applicant worked at the company as a porter from November 1981 to June 1986.

A letter from the managing director of Punjab Drugs, Inc. in Long Island City, New York, dated October 4, 1990, stating that the applicant was employed as a “helper” from July 1986 to July 1990, and was paid in cash.

- A letter from the assistant director of the Jamaica Muslim Center, Inc. in Queens, New York, dated November 15, 1990, stating that the applicant was an active member of the center from July 1981 to July 1990.

- Two affidavits from [REDACTED], a resident of Amityville, New York, dated August 23, 1991, stating that the applicant lived with him in apartments at the following addresses during the 1980s: (1) [REDACTED] in Elmhurst, New York, from March 1981 to January 1982; (2) [REDACTED] in Woodside, New York, from February 1982 to January 1986; and (3) [REDACTED] in Copiague, New York, from February 1986 to August 1990.
- An affidavit from [REDACTED], a resident of Elmhurst, New York, dated September 9, 1991, stating that she has known the applicant through her husband since July 1981.
- An affidavit from [REDACTED], a resident of Jamaica, New York, dated October 21, 1991, stating that he knows the applicant used to live at [REDACTED] and [REDACTED] in New York during the period from 1981 to 1986 because the affiant lived in the same area and saw the applicant almost every week.
- An affidavit from [REDACTED], a resident of Elmhurst, New York, dated January 29, 2001, stating that he took the applicant, his younger brother, to an INS (Immigration and Naturalization Service) office in Manhattan on August 18, 1987, to file an application for legalization under the 1986 immigration reform law, but that a front-desk officer told him he was ineligible because of a trip to Bangladesh in 1983.

On September 25, 2006, the director issued a Notice of Intent to Deny (NOID), citing some inconsistencies between the applicant's oral testimony at his interview for LIFE legalization on May 27, 2003 and agency records, including information provided by the applicant on his Form I-485 and Form I-687. The director indicated that these inconsistencies undermined the credibility of the applicant's claim to have resided continuously in the United States during the time period required for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

In response the applicant offered explanations for the evidentiary inconsistencies cited in the NOID and submitted some additional documentation, including:

- Information from a New York State government website about the two businesses where the applicant claims to have worked during the 1980s.
- Two original envelopes addressed to the applicant in the United States from individuals in Bangladesh, with postmarks the applicant claims are dated in 1985 and 1986.

An affidavit from [REDACTED] of unidentified address, dated October 20, 2006, stating that he has known the applicant since 1981, when they met at a family gathering, and that to the best of his knowledge the applicant worked at Charge & Travel, Inc. from 1981 to 1986.

On October 24, 2006, the director issued a Notice of Decision denying the application. The director found that the applicant's rebuttal and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. The director concluded that the evidence of record failed to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, counsel asserts that the director did not give proper consideration to the affidavits and letters in the record, and completely ignored the additional documentation submitted in response to the NOID. In counsel's view, the evidence of record is sufficient to establish the applicant's eligibility for LIFE legalization.

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 only documentation in the record that appears to date from the 1980s are the letter envelopes submitted by the applicant in response to the NOID. One envelope is addressed to the applicant at [REDACTED] in Woodside (where he claims to have lived from February 1982 to January 1986), and the other is addressed to the applicant at [REDACTED] in Copiague (where he claims to have lived from February 1986 to August 1990). According to the applicant, the letters are postmarked in October 1985 and April 1986, respectively. Although the postmarks are virtually illegible, those dates are not impossible since the stamps on the envelope are from series that were issued in December 1983, or in one case 1979-1982. *See Scott 2006 Standard Postage Stamp Catalogue*, Vol. 1, pp. 660-61. Even if the AAO accepted the envelopes as credible evidence of the applicant's residence in the United States in 1985 and 1986, however, they would not be sufficient in and of themselves to establish the applicant's continuous residence in the United States before 1985, much less before January 1, 1982, as required for legalization under the LIFE Act. We must therefore review the rest of the evidence.

The employment letters from the managing directors of Charge & Travel, Inc. and Punjab Drugs, Inc., both dated October 4, 1990, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. Nor are the applicant's duties described in detail. While his title of porter at Charge & Travel at least suggests what he may have been doing, the title of "helper" at Punjab Drugs says almost nothing. The AAO also notes that the signature of Charge & Travel's managing director is illegible, and his name is not identified elsewhere in the letter. For the reasons discussed above, the AAO determines that the employment letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the 1980s.

In a similar vein, the letter from the assistant director of the Jamaica Muslim Center, Inc. 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 the assistant director, [REDACTED], dated November 15, 1990, does not state where the applicant lived at any point in time between 1981 and 1990. The letter does not indicate how and when Mr. [REDACTED] met the applicant, and whether the information about his attending services since 1981 was based on Mr. [REDACTED]'s personal knowledge, Muslim Center records, or hearsay. Since Mr. [REDACTED]'s letter does 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.

The affidavits by [REDACTED] and [REDACTED] dating from 1991; by [REDACTED], dating from 2001; and by [REDACTED], dating from 2006, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. While they all claim to have known the applicant since 1981, the affiants provide almost no information about his life in the United States and their interaction with him over the years. 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 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.