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U.S. Citizenship
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FILE:



Office: NEW YORK

Date: **JUL 11 2008**

MSC 02 183 63269

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 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 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 review the evidence of record. The applicant reiterates his claim to have resided continuously in the United States in an unlawful status since August 1981, and submits some additional documentation.

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 August 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 1, 2002. At that time the only evidence in the record of the applicant’s residence in the United States during the 1980s were three affidavits from acquaintances, which included the following:

An affidavit from [REDACTED], the manager of Dynasty Chinese Restaurant in New York City, dated February 24, 1990, stating that the applicant had been employed as a waiter since November 1986.

- An affidavit from [REDACTED], a resident of Bronx, New York, dated March 2, 1990, stating that he met the applicant in June 1984 at a social function in Brooklyn, that (s)he continued to see him thereafter as a social worker, and that (s)he also went to movies and on picnics with the applicant.

An affidavit from [REDACTED], a resident of Woodside, New York, dated October 10, 1992, stating that he had met the applicant at a party in August 1981 and, to the best of his knowledge, the applicant had lived at the following

addresses since then: (1) [REDACTED], in Jamaica, New York, from August 1981 to October 1985; (2) [REDACTED], in Pompano Beach, Florida, **from November 1985 to February 1986**; and (3) [REDACTED], in Woodside, New York, from March 1986 to 1992.

When he filed his application under the LIFE Act in April 2002 the applicant also submitted a biographic information sheet (Form G-325A) which contained some conflicting information about his residential address(es) in the 1980s. On that form the applicant stated that his last residence outside the United States of more than one year was in the town of Sreeangon, Bangladesh, from March 1964 (the month of his birth) until October 1986.

At his interview for LIFE legalization on July 27, 2004, however, the applicant testified that he came to the United States in August 1981 and lived for the rest of the 1980s at the three addresses listed in the 1992 affidavit of [REDACTED] which are the same addresses the applicant listed in an application for temporary resident status (Form I-687) he submitted in October 1991. The applicant also testified that he traveled to Bangladesh on August 2, 1986 to visit his mother and returned to the United States on October 2, 1986. At the interview and subsequent thereto the applicant submitted five additional affidavits from residents of the New York City area – [REDACTED], and [REDACTED] – three of whom stated that they had known the applicant in the United States since 1981 and two of whom stated they had known the applicant in the United States since 1984 and 1986, respectively.

On July 27, 2006, the director issued a Notice of Intent to Deny (NOID). The director noted that the applicant had no documentary evidence of his entry to the United States in 1981, or his departure and re-entry in 1986. Nor had the applicant provided any evidence that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return from Bangladesh to the United States in 1986 within 45 days, as required in the regulation to maintain continuous residence in the United States. The director also noted the conflicting information provided in the applicant's Form G-325A regarding his place of residence up to 1986, which undermined the applicant's claim of continuous residence 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.

In response to the NOID the applicant stated that he had made a "clerical mistake" on the Form G-325A he submitted in 2002 by identifying an address in Bangladesh as his place of residence from March 1964 to October 1986. According to the applicant, he misunderstood that section of the form and the correct information is that he resided at the specified address in Bangladesh **only until July 1981. The applicant submitted an amended Form G-325A, along with two additional affidavits from [REDACTED] and [REDACTED], who had originally submitted affidavits two years earlier, in the summer of 2004, with virtually identical form and content.**

On August 28, 2006, the director denied the application on the ground that the applicant's response to the NOID failed to overcome the grounds for denial of his application. In particular, the director noted that the applicant's two-month absence from the United States in 1986, visiting his mother in Bangladesh, exceeded the 45-day maximum for a single absence from the United States prescribed in 8 C.F.R. § 245a.15(c)(1), and that no evidence had been submitted that emergent reasons¹ had prevented a return to the United States within the allowable time period.

On appeal the applicant reiterates his claim that he entered the United States unlawfully on August 10, 1981, maintained continuous unlawful residence in the United States through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988. The applicant asserts that his only absence from the United States during the 1980s was in 1986 – when he left the United States on August 2nd to visit his mother in Bangladesh, intended to return on September 8th, but was delayed by a cyclone that struck Bangladesh on September 5, 1986, which both prevented him from reaching Zia International Airport and necessitated that he assist his family in Bangladesh. As evidence thereof the applicant submits an affidavit from his mother, [REDACTED] dated September 21, 2006, confirming that their town of Sreeangon, in the district of Faridpur, was badly affected by the cyclone. As described by [REDACTED], their house was submerged, their communications with the capital city of Dakka were cut off until floodwaters receded a month later, and the family stayed in a flood shelter until late October 1986. After helping his family cope with the emergency, [REDACTED] states, the applicant left for Dakka on September 25, 1986 to begin his return to the United States. The applicant also submits a letter from the municipality of Faridpur, dated September 24, 2006, confirming that the applicant and other family members received emergency assistance from September 5 to October 30, 1986 due to the flood.

The applicant contends that the director neglected to properly consider his affidavit evidence, as well as some other documentation submitted at the time of his interview for LIFE legalization in 2004, including a “purchase invoice” from 42nd St. Photo in New York City and a stamped envelope from Bangladesh. In support of the appeal the applicant also submits some additional evidence, including:

- A sworn statement from [REDACTED] a resident of Jackson Heights, New York, dated September 8, 2006, stating that he knows the applicant resided at [REDACTED], in Woodside, New York, from March 1, 1986 through May 4, 1988.
- A second affidavit from [REDACTED] a resident of Elmhurst, New York, dated September 26, 2006, stating that he met the applicant in Astoria, Queens, on

¹ 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.”

March 26, 2006 and knows that he resided continuously in the United States from that date through May 4, 1988.

An affidavit from [REDACTED] a resident of Astoria, New York, dated October 14, 1991, stating that he has known the applicant since November 1981, employed him at the Queens Party Club as a flyer distributor, and was invited to his house at [REDACTED], in Jamaica, for dinner on New Year's Eve 1981-82.

A photocopied letter from [REDACTED], the manager of Deli Grocery Inc. in Brooklyn, New York, to the Immigration and Naturalization Service (INS)'s Legalization Unit in Manhattan, dated October 15, 1991, stating that the applicant was employed at the store as a cashier, with weekly pay of \$250, from June 1982 to September 1985.

- A photocopied earnings statement signed by the applicant on the letterhead of Bellevue Hospital Center in New York City, dated April 22, 1982.

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 earliest document on record, according to the applicant, is the envelope addressed to him at [REDACTED] in Jamaica, New York, which enclosed a letter from his father in Bangladesh. The applicant claims the letter was mailed in January 1982, and there is a postmark over the stamps which appears to read "05.01.82." This postmark is clearly fraudulent, however, since the stamps on the envelope – of Zia International Airport and a postal sorting machine – had not yet been issued by the Bangladeshi government in January 1982. As indicated in the Scott 2006 Standard Postage Stamp Catalogue, Vol. 1, pp. 661-62, the 2-taka stamp of Zia International Airport was issued on December 21, 1983, and the 3-taka stamp of a postal sorting machine was issued in the years 1986-1993.

Thus, the envelope submitted by the applicant has no probative value as evidence of the applicant's residence in the United States during 1982. Moreover, doubt cast on any aspect of

the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The other document in the record with a date in 1982 is the photocopied statement on the letterhead of Bellevue Hospital Center in New York City – entitled “Outpatient Registration and Financial Counseling (Self-Employed Statement of Income)” – which is dated April 22, 1982, and contains a statement by the applicant of his monthly earnings (\$150/week), residential address, and phone number, as well as the signature and stamp of a notary public verifying the date. On its face, this document appears to be genuine.

In weighing the credibility of this document, however, the AAO cannot overlook the fraudulent postmark on the envelope discussed above. The AAO is also mindful of the applicant's statement on his original Form G-325A, filed with his LIFE Act application in 2002, that his last address outside the United States of more than one year was on [REDACTED] in Sreeangon, Faridpur, Bangladesh, from March 1964 to October 1986. This is the return address on the envelope from the applicant's father, and was evidently the applicant's family home.

In his response to the NOID in 2006 the applicant stated that the information he provided on his Form G-325A about the dates of his residence in Bangladesh was incorrect, that he misunderstood this line on the form, and that he actually lived at the address in Bangladesh only until July 1981. The applicant submitted an amended Form G-325A with the appropriate change. The AAO is skeptical of this explanation. While the applicant called the error a “clerical mistake,” this term is misleading since the applicant appears to have been the only person who filled out the original Form G-325A. The line in question on the form is not difficult to understand, and the applicant's command of English does not seem to be an issue. The AAO suspects that October 2, 1986 – consistently identified by the applicant over the years (*e.g.* on Forms I-485, I-765, and I-687) as his date of last arrival in the United States – may have also been his initial date of entry.

The only other primary evidence of the applicant's residence in the United States during the 1980s is the receipt from 42nd St. Photo in New York City, with handwritten notations identifying the date as July 28, 1986 and the applicant as the purchaser, in cash, of some electronic merchandise. The customer's address line is not filled in, however, and the document contains no date stamp or other authenticating mark from the store. Thus, the receipt has little probative value. Even if the AAO were to grant it greater evidentiary weight, the receipt does not show that the applicant resided in the United States before 1986.

As for the affidavits and letters in the record, three are from individuals who state that their businesses employed the applicant in various capacities during the 1980s. None of the three employment letters comports 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 were available for review. In view of these crucial omissions, and the lack of any

earnings statements or business records documenting the applicant's employment, the AAO concludes that the employer letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The remaining affidavits – including two from the early 1990s, five from 2004, and four from 2006 (including the two filed on appeal) – are from individuals who claim to have met the applicant at various times between 1981 and 1986. A number of the affiants, including both on appeal, do not claim to have known the applicant before the mid-1980s, and therefore have no personal knowledge of whether the applicant resided in the United States before 1982. All of the affidavits have minimalist or fill-in-the-blank formats with limited personal input by the affiants. For the amount of time they claim to have known the applicant, the affiants provide remarkably little information about his life in the United States, and their interaction with him over the years. Moreover, 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 during the 1980s. In view of these substantive shortcomings, the affidavits are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis, the AAO determines 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. 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.