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FILE:

[REDACTED]

Office: ATLANTA

Date:

MAY 30 2006

MSC 02 186 61474

IN RE: Applicant:

[REDACTED]

APPLICATION:

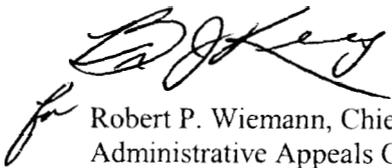
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

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 Atlanta, Georgia. 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, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal the applicant submits some additional documentation and requests that his case be reconsidered.

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 November 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 4, 2002. As evidence of his continuous residence and physical presence in the United States during the requisite time periods during the 1980s, the applicant submitted the following pertinent documentation:

- An air mail envelope addressed to the applicant at [REDACTED], Williston Park, Long Island, New York, from an individual in Bangladesh, with a postmark that appears to read 12.09.83.
- A photocopied letter addressed to the applicant from the new accounts representative of Access Financial Services, Inc. in Scotch Plains, New Jersey, dated September 10, 1984.
- A photocopied affidavit from the manager of BG and BG, Inc. in Bronx, New York, dated June 20, 1990, stating that the applicant was employed by his company from December 1981 to October 1986 on a part-time basis for an annual salary of around \$6,500.

- A photocopied affidavit from the president of Jamal Contracting in Brooklyn, New York, dated May 21, 1991, stating that the applicant “served this contracting firm” during the years 1983-1986.
- A photocopied letter from the vice-president of the Cultural Association of Bengal in Pelham Manor, New York, dated February 13, 1993, stating that he had known the applicant for a long time and that the applicant was an active member of the association from April 1982 to December 1990.
- A photocopied affidavit from [REDACTED] a resident of South Glastonbury, Connecticut, dated December 18, 2001, stating that he met the applicant in Brooklyn, New York, in December 1981 and that the applicant had visited his house numerous times since then.

On January 21, 2005, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant’s unlawful entry into the United States before January 1, 1982 and continuous residence in the country through May 4, 1988, as well as his continuous physical presence from November 6, 1986 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

Counsel responded to the NOID by indicating that the applicant did not have any additional documentation to submit.

On July 11, 2005, the director issued a Notice of Decision denying the application. In the director’s view, the evidence of record was neither sufficient nor credible enough to establish that the applicant entered the United States before January 1, 1982, resided in the United States thereafter in continuous unlawful status through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, the applicant requests that his case be reconsidered and submits two additional pieces of documentation, including:

- An affidavit from [REDACTED], a resident of Water Ford [Waterford?], New York, dated April 5, 2005, stating that she is the applicant’s grandmother, that the applicant came to her house in Dhaka, Bangladesh in November 1981 before departing for the United States via London and Nassau, Bahamas, and that she later followed her grandson to the United States, settling initially in Brooklyn and becoming a U.S. citizen in 1992.
- Another affidavit from [REDACTED] also dated April 5, 2005, stating that she and her husband (the applicant’s grandfather) accompanied him to Manhattan in January 1988 in an unsuccessful attempt to apply for legalization.

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, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the country from November 6, 1986 through May 4, 1988. The AAO determines that he has not.

The employment letters from the manager of BG and BG, Inc. and Jamal Contracting 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 describe the applicant's duties, did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. Due to these infirmities the employment letters are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1988.

As for the affidavits from [REDACTED] and [REDACTED], and the letter from the vice-president of the Cultural Association of Bengal, their common features are minimalist formats and limited substance. For the amount of time they claim to have known the applicant, the authors provide remarkably little information about his life in the United States, and their interaction with him over the years. They do not identify where the applicant was living in the United States during the years 1981-1988, and they do not indicate where, or whether, he was employed during that time. Furthermore, the affidavits/letters are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationship with the applicant and their own presence in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits/letters have little evidentiary weight.

Lastly, the photocopied letter from Access Financial Services, Inc., dated September 10, 1984, and the envelope addressed to the applicant in New York, postmarked 12.09.83, even if they are viewed as credible evidence of the applicant's residence in the United States at those times, do not indicate that the applicant had established a residence in the United States before January 1, 1982, as required for LIFE legalization.

Based on the foregoing analysis, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). Therefore, 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.