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U.S. Citizenship
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FILE:

[Redacted]
MSC 02 184 61351

Office: NEW YORK

Date: NOV 19 2008

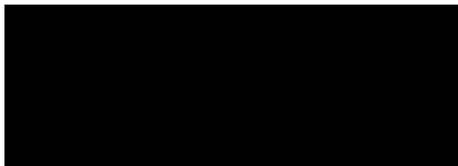
IN RE: Applicant:



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.

A handwritten signature in black ink, appearing to read "John F. Grissom".
for
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 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 country in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director did not give proper weight to the documentation submitted by the applicant, which establishes his continuous residence in the United States 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.)

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, who was born in Bangladesh on [REDACTED] and claims to have resided in the United States since October 7, 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on April 2, 2002. At that time the record included the following evidence of the applicant’s residence and physical presence in the United States during the 1980s, which had been filed along with a Form I-687 (application for temporary resident status) and a Form for Determination of Class Membership in CSS [Catholic Social Services] v. Meese (a legalization class action lawsuit) in March 1992:

- An affidavit by [REDACTED], a resident of Brooklyn, New York, dated March 9, 1992, stating that he knew the applicant resided at [REDACTED] in New York City from October 1981 to May 1984 and at [REDACTED] in Brooklyn from June 1984 to December 1989. [REDACTED] indicated that he and the applicant attended numerous religious and cultural gatherings, such as the Eid festival and Bangladesh independence day, and that the applicant used to visit his home.
- A letter from [REDACTED] managing agent of Heatmasters Realty Corp. in Brooklyn, dated March 10, 1992, stating that the applicant resided at [REDACTED] in Brooklyn from June 1984 to December 1989.

An affidavit by [REDACTED] a resident of Holiday, Florida, dated March 13, 1992, stating that he met the applicant at a friend’s house in 1983 and had seen him two or three times a year since then.

A notarized statement by [REDACTED] dated March 3, 1992, indicating that the applicant worked at the Flor de Mayo Restaurant in New York City from December 1981 to July 1984 as a delivery boy at a pay rate of \$3.50/hour.

A notarized statement by [REDACTED] on the letterhead of [REDACTED] Construction Co. in Brooklyn, dated November 12, 1991, indicating that the applicant was employed by the company in various capacities from 1987 to 1990 at a pay rate of \$250/week.

When the Form I-485 was filed in 2002 the applicant submitted additional documentation as evidence of his residence in the United States during the 1980s, including:

- An affidavit by [REDACTED], a resident of Brooklyn, New York, dated September 19, 2001, stating that he met the applicant on October 14, 1981, when the applicant visited New York with his cousin, that the applicant stayed at his house for awhile in Brooklyn, and that he helped the applicant get a room on West [REDACTED] where he lived with another Bangladeshi.

A letter from [REDACTED] on the letterhead of West Side Stationers, dated September 10, 2001, stating that he met the applicant on October 25, 1981, when the applicant moved to [REDACTED] that the applicant looked for a job in his store, which was across the street from the applicant's apartment, that the applicant ultimately got a job at the Flor De Mayo restaurant as a delivery person and would sometimes deliver food to his store, and that the applicant also used to shop in the store.

An affidavit by [REDACTED], a resident of New York City, dated September 19, 2001, stating that he met the applicant on December 7, 1981, his first day of work at the Flor De Mayo Restaurant, when the applicant delivered food to his house, that the applicant continued to deliver food to his house up to March 1994, and that he would also see the applicant when he visited the restaurant.

- Another letter by [REDACTED] the owner of Flor De Mayo Restaurant in New York City, dated September 14, 2001, stating that the applicant worked at the restaurant from December 7, 1981 to July 27, 1984, delivering food by bicycle and doing minor jobs inside the restaurant, and that he was rehired on March 21, 1994 as a "car delivery person" and continued to work in that capacity up to the present (2001).
- An affidavit by [REDACTED] a resident of Elmhurst, New York, dated September 25, 2001, stating that he met the applicant on July 10, 1983 in the "Spice of India Grocery Store" he managed in Manhattan, that the applicant was a regular customer in his store, and that he used to see the applicant often in the [REDACTED] for Friday prayers and other religious occasions.

- An affidavit by [REDACTED] a resident of Woodside, New York, dated September 21, 2001, stating that he was the applicant's roommate at [REDACTED] in Brooklyn from June 1, 1986 to November 16, 1989, and that they attended many religious and cultural events together during that time.

At his interview for LIFE legalization, on March 8, 2004, and in response to a request for evidence issued that day, the applicant submitted the following additional documentation:

- Four air mail envelopes addressed to the applicant in New York City or Brooklyn from an individual in Bangladesh with postmark dates of March 3, 1982, August 12, 1985, May 14, 1986, and December 9, 1986.
- An affidavit by [REDACTED] managing agent of Heatmasters Realty Corp. in Brooklyn, dated August 7, 2002, stating (as in his earlier letter in 1992) that the applicant resided at [REDACTED] from June 1984 to December 1989.
- An affidavit by [REDACTED] a resident of Ontario, Canada, dated November 18, 2002, stating that the applicant came from the United States for a visit and stayed at his house from May 15 to 20, 1987, that they visited some relatives in Canada together, and that he has talked with the applicant occasionally by phone since then.
- An affidavit by [REDACTED] a resident of Sunnyside, New York, dated May 13, 2004, stating that he met the applicant on August 5, 1986, that they used to visit each other's homes, spend time together on weekends, and attend Bangladeshi cultural events, and that they are still in touch.

An affidavit by [REDACTED], a resident of Woodside, New York, dated May 16, 2004, stating that he met the applicant on May 29, 1986, that they used to watch movies together, visit each other's houses, and attend many Bangladeshi cultural and religious events together, and that they are still in touch.

On July 19, 2007 the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant's continuous residence in the United States during the requisite period for LIFE legalization. The director granted the applicant 30 days to submit additional evidence. In response to the NOID the applicant submitted three additional items, including:

Photocopies of two more air mail envelopes from the same individual in Bangladesh, addressed to the applicant in New York and Brooklyn, with postmark dates of January 5, 1983 and September 13, 1984.

A photocopied receipt for film development from Ludwig Pharmacy in Brooklyn, dated January 11, 1988, identifying the applicant as the customer.

On September 17, 2007 the director issued a Notice of Decision denying the application. The director indicated that some of the affidavits submitted by the applicant could not be verified because the affiants could not be reached and others were substantively deficient. The director also indicated that the air mail envelopes, all of which were franked rather than stamped, did not appear to be authentic because (1) none of the envelopes bore a U.S. Postal Service mark and (2) Bangladesh did not begin franking international mail until February 19, 1984, whereas two of the franked envelopes submitted by the applicant bore postmark dates in 1982 and 1983. Lacking any other primary or secondary evidence of the applicant's residence in the United States during the years 1981 to 1988 – such as school or medical records – the director concluded that the applicant had failed to carry his burden of proof, by a preponderance of the evidence, that he 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 give proper consideration to the affidavits submitted by the applicant. Counsel also disputes the director's finding that the envelopes ostensibly mailed to the applicant from Bangladesh during the 1980s were of doubtful authenticity. Counsel submits two new pieces of evidence, including:

- An article on the early postal history of Bangladesh published in August 2005.

A copy of an undated photograph of the applicant, allegedly taken on a street in New York City.

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 resided in the United States in continuous unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The photograph submitted by the applicant on appeal is undated, and there are no definitive indicators in the photo as to when and where it was taken. Even if the photo was of the applicant and taken in New York during the 1980s, as counsel suggests, it would not, in and of itself, demonstrate that the applicant was residing in the United States at that time, as opposed to visiting. With regard to the photocopied receipt of Ludwig Pharmacy, dated January 11, 1988, identifying the applicant as the customer and his address as [REDACTED] in Brooklyn,

there is no way to positively confirm the date the receipt was actually written. Even if the AAO accepts the receipt as persuasive evidence that the applicant resided in Brooklyn as of January 1988, it is not persuasive evidence of the applicant's residence in the United States in prior years, much less that his continuous residence in this country began before January 1, 1982.

The only other documentation in the record bearing dates from the 1980s are the six franked air mail envelopes with postmarks dated in 1982, 1983, 1984, 1985, and 1986. In her decision the director cited two indicators of inauthenticity: (1) that none of the envelopes bears a mark of the U.S. Postal Service and (2) that two of the postmarks predate the beginning of franked international air mail in Bangladesh. Counsel maintains that incoming mail from foreign countries is not stamped by the U.S. Postal Service, but overlooks the fact that such mail generally does bear a U.S. Postal Service mark to verify its arrival in the United States. The six envelopes submitted by the applicant have no such authenticating marks. While asserting that the director erred in stating that Bangladesh did not frank international mail until 1984, counsel offers no rebuttal information and appears to misinterpret the decision as an incorrect finding that no international air mail whatsoever could have originated from Bangladesh before 1984. Counsel submits an article about the dislocations in the Bangladeshi postal system during the early 1970s, resulting from the war that established the country in December 1971. The article does not discuss the franking of international air mail, or any other aspects of the Bangladeshi postal system, after the early 1970s. Thus, the article is irrelevant to the instant appeal.

The AAO concludes that the applicant has not established the authenticity of any of the franked air mail envelopes with postmark dates between 1982 and 1986. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The letters by [REDACTED], stating that the applicant worked at the Flor de Mayo restaurant as a delivery boy from December 1981 to July 1984 and at the [REDACTED] Construction Co. in various capacities from 1987 to 1990, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not identify the applicant's address during the periods of employment, do not declare whether the information was taken from company records, and do not indicate whether such records are available for review. In addition, the letter from Mr. [REDACTED] does not state exactly when the applicant's employment started (and ended) at the [REDACTED] Construction Co. and does not describe the applicant's duties. Furthermore, the applicant has not submitted any earnings statements, tax records, or other corroborative documentation to demonstrate that he was actually employed by either company. For the reasons discussed above, the AAO determines that the employment letters have limited 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 other affidavits, notarized statements, and letters in the record are from individuals who claim to have met, lived with, socialized with, or otherwise known the applicant at various times during the 1980s. They all have minimalist or fill-in-the-blank formats with limited personal input from the authors. Considering how long they claim to have known the applicant, the authors provide remarkably few details about how they met him and the nature and extent of their interaction with the applicant over the years. The authors did not submit any documentation establishing their own identities. Furthermore, there is no documentary evidence in the record – such as photographs, letters, and the like – demonstrating the authors' personal relationships with the applicant during the 1980s. For the reasons discussed above, and in light of the inauthentic envelopes previously discussed, the AAO determines that the myriad affidavits, notarized statements, and letters have limited 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.

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. 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.