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FILE:



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Office: NEW YORK CITY

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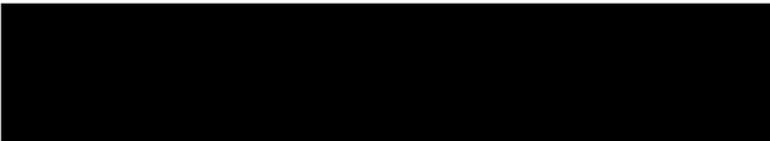
IN RE: Applicant:



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.

*John H. Vaughan*  
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 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 give proper weight to the evidence submitted by the applicant in support of his claim. In particular, counsel asserts that the director failed to articulate the reasons he found the affidavit evidence not credible. In counsel's opinion, the evidence in the record is sufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

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 December 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on February 25, 2002. As evidence of his residence in the United States during the years 1981-1988, the applicant submitted a series of letters and affidavits. They included the following:

Two affidavits from [REDACTED] a resident of Brooklyn, New York, dated July 28, 1993, and February 3, 2002, stating that he has known the applicant since 1981, that he has personal knowledge that the applicant resided at the following addresses in the United States: [REDACTED] Woodside, New York, from October 1981 to May 1982; [REDACTED], Maspeth, New York, from June 1982 to May 1985; [REDACTED], Brooklyn, New York, from June 1985 to December 1992; and other addresses in Brooklyn, New York from 1992 to 2002, that they are personal friends and have frequently visited each other’s home, and that he had personal knowledge that the applicant left the

United States for a visit to Bangladesh on June 1, 1987 and returned on June 20, 1987.

- An affidavit from [REDACTED] a resident of Woodside, New York, dated January 15, 2002, stating that he first met the applicant in October 1981, when the applicant first came to the United States, and that the applicant lived with him as his roommate at [REDACTED], Woodside, New York, from October 1981 to May 1982.
- An affidavit from [REDACTED], a resident of Brooklyn, New York, dated February 19, 2002, stating that the applicant has been a family friend from the time they lived in Bangladesh, that they continued the friendship after the applicant came to the United States, that they frequently visited each other's home, that he recalled that the applicant traveled to Bangladesh in 1987 because the applicant carried a package for his mother, and that the applicant returned to the United States a few weeks later.
- An undated affidavit (probably in 1993 or 1994) from [REDACTED], a resident of Brooklyn, New York, stating that the applicant lived with him in his apartment located at [REDACTED] Brooklyn, New York, from June 1985 to December 1992, and that they shared rent, food and utility bills equally.

In a Notice of Intent to Deny (NOID), dated April 9, 2007, the director stated that the applicant had not submitted sufficient credible evidence to establish his continuous unlawful residence in the United States during the statutory period. The director indicated that the affidavits submitted by the applicant were neither credible nor are amenable to verification. The applicant was granted 30 days to submit additional evidence.

In response, counsel submitted additional documentation as evidence of the applicant's residence in the United States, including the following:

Another affidavit from [REDACTED], a resident of Brooklyn, New York, dated April 26, 2007, restating the information about the applicant's addresses in the United States previously stated in his February 3, 2002 affidavit. In addition, Mr. [REDACTED], attested that he knew the applicant worked as a "hawker" on 7<sup>th</sup> Avenue and 34<sup>th</sup> Street in Manhattan from 1981 to June 1988, selling toys and books, and that from April 1989 to the present the applicant worked with P&P Brothers on 23rd and Park Avenue, New York. Mr. [REDACTED] stated that he occasionally visited the applicant at his work locations and that the applicant would discuss his work problems with him. Mr. [REDACTED] also attached a copy of an identity document.

- An affidavit from [REDACTED], a resident of Brooklyn, New York, dated April 27, 2007, stating that the applicant is his friend, and that he has personal

knowledge that the applicant lived at these addresses in the United States from December 1981 to April 2007: [REDACTED], Maspeth, New York, from December 1981 to May 1985; [REDACTED], Brooklyn, New York, from June 1985 to December 1992; and other addresses in Brooklyn from 1993 through 2007. Dr. [REDACTED] attached a copy of his business card.

- Affidavits from [REDACTED], and from [REDACTED], residents of Brooklyn, New York, dated May 15, 2007, stating that the applicant is a family friend, that they visited each other's home, and that they have personal knowledge that the applicant resided in the United States at [REDACTED] 1, Brooklyn, New York, from June 1985 to May 1992, and other addresses in Brooklyn, New York from 1993 through 2007. Mr. [REDACTED] and Ms. [REDACTED] attached copies of identity documents.

On June 23, 2007, the director issued a Notice of Decision denying the application. The director indicated that of the five affidavits submitted in response to the NOID, only three attested to the applicant's continued residency in the United States through the statutory period, and that those affidavits were not credible. The director noted that the affidavits from two of the affiants are worded exactly the same, that one of the affiants claimed to have met the applicant in October 1981, two months before the applicant claimed he entered the United States, and that Citizenship and Immigration Services (CIS) records showed that one of the affiants, who attested to have known the applicant since 1981, was not present in the United States prior to 1985. The director concluded that the applicant had not provided credible evidence to establish his eligibility for LIFE legalization.

On appeal counsel asserts that the director did not give proper weight to the evidence submitted by the applicant in support of his claim. Counsel asserts that the director failed to articulate the reasons he found the affidavits not credible. In counsel's opinion, the evidence in the record is sufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. Counsel did not submit any additional documents with the appeal.

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.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since December 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

The affidavits by [REDACTED] and [REDACTED], provide some basic information about the applicant, such as the addresses he claims in the United States during the 1980s, but few details about the applicant's life in the United States and his interaction with the affiants during the years they supposedly have known one another and socialized together. The information in the affidavits is not very personal in nature, and could just as easily have been provided by the applicant. 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.

The affidavit by [REDACTED], claiming that the applicant had been a family friend since the time they lived in Bangladesh and that they continued the friendship after they came to the United States, did not provide any information about the applicant's residence in the United States except for the applicant's trip to Bangladesh in 1987. The affidavit has no probative value as 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.