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U.S. Citizenship
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FILE:



MSC 02 214 61873

Office: DETRIOT

Date: OCT 14 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, (director) in Detroit Michigan. The matter is now 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 in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988.

As provided in the regulations at 8 C.F.R. § 103.3(a)(2)(i), an appeal together with the fee specified in 8 C.F.R. § 103.7 must be filed “with the office where the unfavorable decision was made” within 30 days of the date the decision was served. Three additional days are allowed for an appeal if the notice of decision was served by mail. *See* 8 C.F.R. § 103.5a(b). Since the notice of decision was mailed to the applicant in this case, a 33-day appeal period is extended until the next day. *See* 8 C.F.R. § 1.1 (h).

The decision by the Detroit District office was issued on December 17, 2003. The decision was appealed to the Administrative Appeals Office (AAO). The AAO rejected the appeal on April 3, 2007, finding that it had been untimely filed because the Form I-290B was received on January 21, 2004, 35 days after the decision was issued.

The applicant, through counsel, has now submitted a Motion to Reopen along with proof that the appeal was timely filed.¹ The applicant submitted a copy of a FedEx tracking sheet indicating that the appeal was received and signed for by the Detroit District Office on January 20, 2004, at 8:33a.m. The AAO has *sua sponte* reopened its prior decision because it finds the appeal was timely filed on Tuesday January 20, 2004, which was one day after the Martin Luther King, Jr. holiday and 34 days after issuance of the director’s decision on December 17, 2003. The AAO’s decision of April 3, 2007 will be withdrawn. The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, in particular because he spent some of that time in the United States in legal status with a B-2 visa.

On appeal counsel asserts that a brief and temporary legal status during the requisite period of continuous unlawful residence in the United States does not disqualify an applicant for permanent resident status under the LIFE Act. Counsel contends that the applicant has submitted sufficient proof of his continuous residence in the United States since before January 1, 1982.

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

¹ Motions to reopen a proceeding or reconsider a decision on an application for permanent resident status under section 1104 of the LIFE Act are not considered. 8 C.F.R. § 245a.20(c). The AAO may, however, *sua sponte* reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

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).

An applicant for permanent resident status under section 1104 of the LIFE Act (Life Legalization applicant) must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States, and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 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 states that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. 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 petitioner 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 or petitioner 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 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 permanent residence status under the LIFE Act (Form I-485) on May 2, 2002. As evidence of his residence in the United States during the years 1981 through 1988, the applicant submitted his own statement, one letter of employment, an affidavit from an acquaintance, and an air mail envelope.

The director issued a Notice of Intent to Deny (NOID), dated August 4, 2003, indicating that the record did not establish that the applicant resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director noted that the applicant's testimony at his LIFE interview on April 10, 2003, information on Form I-687, dated March 7, 1992, and his affidavit dated May 15, 2002, in which he claimed that he entered the United States on August 8, 1984 with a B-2 non-immigrant visitor visa, indicated that the applicant made a lawful entry in 1984 as a B-2 visitor and was in legal status for six months during the statutory period and therefore did not qualify for status under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, the applicant asserted that the B-2 was not a valid visa, because he had procured the B-2 visa by fraud and that he had been residing in the United States illegally, and therefore it did not interrupt his unlawful residence in the United States

On December 17, 2003, the director denied the application stating that the evidence submitted was not sufficient to overcome the grounds for denial stated in the NOID.

On appeal, counsel, asserts that the director's decision was erroneous because an applicant for legalization under the LIFE Act is not disqualified by short-term period of legal status during the requisite statutory period of continuous unlawful residence in the United States. According to counsel, the evidence previously submitted by the applicant is sufficient proof of his continuous residence in the United States before January 1, 1982 through May 4, 1988.

The AAO agrees with counsel that the basis on which the director found the applicant ineligible for LIFE legalization was incorrect. Nevertheless, the issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he 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 applicant submitted an affidavit dated January 16, 2004, in which he claims that he first came to the United States in 1981, and after the authorized stay expired, he continued to live and work in the United States without legal authorization until July 5, 1984, when he left for Bangladesh, that he last entered the United States on August 8, 1984, using a fraudulent passport and visa, and that after his return to the United States, he resumed his unlawful status. The applicant submitted no evidence in the record to support this claim or any claim of entry before 1982.

The letter of employment from [REDACTED] the owner of Shaju Deli & Grocery in Brooklyn, New York, dated October 31, 1990, stating that the applicant was employed as a salesman from July 1985 to August 1990, at an hourly rate of \$3.75, paid in cash, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it does not provide the applicant's address at the time of employment, does not declare whether the information was taken from company records, and does not indicate whether such records are available for review. The letter was not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant actually had the sales job during any of the years claimed. Additionally, the letter was not accompanied by any documentation from [REDACTED] of his own identity and presence in the United States during the 1980s. Finally, [REDACTED] does not claim that he knew the applicant before 1985. For the reasons discussed above, the employment letter has little probative value as evidence of the applicant's continuous residence in the United States during the years 1981 through 1988.

The affidavit from [REDACTED], dated March 5, 1992, stating that he has been an acquaintance of the applicant since 1982, lacks any details regarding how the affiant became acquainted with the applicant, and provides almost no information about the applicant's life in the United States and his interaction with the affiant over the years. Nor is the affidavit accompanied by any documentary evidence from the affiant – such as photographs, letters, and the like – of his personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavit has little probative value as evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The air mail envelope addressed to the applicant at [REDACTED], Brooklyn, New York, from an individual in Bangladesh, is of no probative value in determining the applicant's residence in the United States during the 1980s because the postmark date is illegible and it cannot be determined when the letter was mailed.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he 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.