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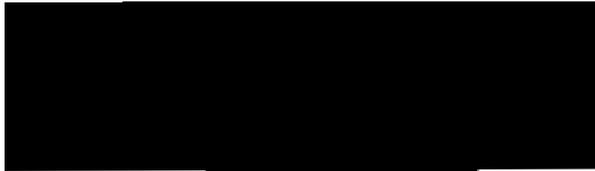
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FILE:

MSC 03 239 64326

Office: NEW YORK CITY

Date: OCT 27 2008

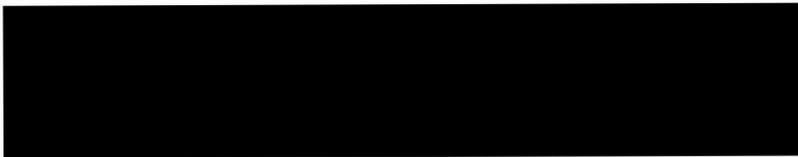
IN RE: Applicant:



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 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 she 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 the applicant asserts that the director failed to properly evaluate the evidence she submitted. The applicant further asserts that she has provided sufficient evidence to establish that she has resided in the United States continuously in an unlawful status since 1981.

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 her application for legal permanent resident status under the LIFE Act (Form I-485) on May 27, 2003. At that time the record included the following evidence of the applicant’s residence in the United States during the years 1981-1988:

- An affidavit from [REDACTED], a resident of Jamaica, Queens, New York, dated May 17, 1993, stating that he is the imam of Jamaica Muslim Center, Inc. in Jamaica, Queens, New York, that he had personal knowledge that the applicant resided at these addresses: [REDACTED] Jamaica, New York, from January 1982 to May 1985; [REDACTED] Long Island City, New York, from June 1985 to October 1986; and [REDACTED] Astoria, Long Island City, New York, from November 1986 to the present (May 1993), that he was able to determine the date of the beginning of his acquaintance with the applicant from the fact that the applicant was a member of the Jamaica Muslim Center, and that the longest period during which he did not see the applicant was two months.

An affidavit from [REDACTED] a resident of Quebec, Montreal, Canada, dated June 20, 1992, stating that the applicant is his aunt, that the applicant visited him in Canada in June 1987, and that the applicant stayed with him during her visit from June 28, 1987 to July 22, 1987.

- An affidavit from [REDACTED], a resident of Astoria, New York, dated June 21, 1992, stating that the applicant had been living with him in his residence located at [REDACTED] Astoria, New York, since November 1986, and that they shared the utility bills.

The applicant submitted the following additional documentation with her Form I-485 and at her interview for LIFE legalization on May 11, 2004:

An affidavit from [REDACTED] a resident of Bronx, New York, dated May 22, 2003, stating that he had personal knowledge that the applicant resided at these addresses: [REDACTED], Jamaica, New York, from January 1982 to May 1985; [REDACTED] Long Island City, New York, from February 2000 to November 2002; and [REDACTED], Woodside, New York, from December 2002 to the present (May 2003), and that the applicant is his friend.

- An affidavit from [REDACTED], a resident of Astoria, New York, dated May 8, 2004, stating that she met the applicant in her Woodside residence in December 1981, and that the applicant visited her home regularly for festivals and various occasions.

On April 16, 2007, the director issued a Notice of Intent to Deny (NOID), stating that the applicant had not submitted credible documentation of her continuous residence in the United States during the period required for adjustment under the LIFE Act. The director noted that there was no proof that the affiants who submitted affidavits on the applicant's behalf had personal knowledge of the events and circumstances of the applicant's residence. The applicant was granted 30 days to submit additional evidence.

On May 16, 2007, the applicant submitted a personal affidavit in which she provided some explanations for the evidentiary deficiencies and submitted copies of documents already in the record.

On May 26, 2007, the director issued a Notice of Decision denying the application. The director stated that the information and documents submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal the applicant asserts that the director failed to properly evaluate the evidence she submitted in support of her claim. The applicant submitted additional documentation in the form

of a merchandise receipt from Skylark International Corp. in Flushing, New York, with a handwritten notation of the applicant's name, dated June 17, 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 she 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 she has not.

The affidavits in the record – dated between 1992 and 2004 – from individuals who claim to have resided with or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. The affidavits provide some basic information about the applicant, such as the addresses she claims in the United States during the 1980s, but considering the length of time they claim to have known the applicant, the affiants provide remarkably little information about her life in the United States, such as where she worked, and their interaction with her over the years. 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 addition, the AAO notes that the affiant [REDACTED] has never resided in the United States and only provided information about the applicant's visit to Canada in 1987 (for about three weeks).

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 merchandise receipt dated June 17, 1982, has handwritten notations with no date stamp or other authenticating mark to verify the date it was written. The receipt identifies the applicant's address as [REDACTED] – which conflicts with the information provided by the applicant on her Form I-687, dated July 16, 1992, and the affidavits from [REDACTED] in 1993 and [REDACTED] in 2003, all of which identified the applicant's address during 1982 as [REDACTED] in Jamaica. Thus the receipt does not appear to be genuine and is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Given the paucity of evidence in the record, the AAO concludes that the applicant has failed to establish that she 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.