

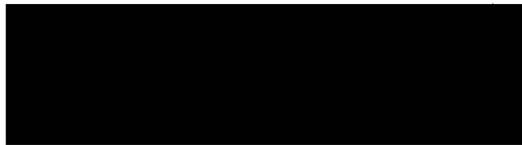


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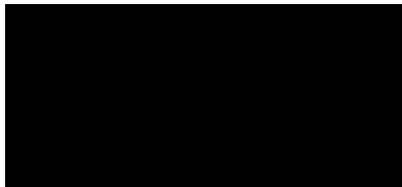
Office: NEW YORK

Date: **SEP 19 2008**

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:



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 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 United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant submits additional documentation as evidence that his residence and physical presence in the United States was not interrupted by an absence from the country of a nature and duration beyond the time allowed for aliens seeking legalization under the LIFE Act.

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 August 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 21, 2003. As evidence of his residence in the United States during the 1980s the applicant submitted photocopies of the following documentation:

- An affidavit by [REDACTED] dated January 7, 1988, stating that the applicant resided with him at [REDACTED] from September 1981 to December 1994, sharing the expenses.

- A notarized statement by [REDACTED] address unidentified, dated September 17, 1988, that he had known the applicant since 1981.

A notarized statement by [REDACTED] vice-president of an unidentified company, dated December 20, 1989, that the applicant had been employed as a “construction helper” from June 1982 to December 1989, and was paid in cash.

- An affidavit by [REDACTED] resident of [REDACTED] in Brooklyn, New York, dated December 21, 1992, stating that he knew the applicant in

Bangladesh and that they had been in contact since 1981 in New York at social functions and private visits since they lived in the same building.

A notarized statement by [REDACTED] a resident of Brooklyn, New York, dated March 29, 1993, that he had known the applicant since 1981.

A notarized undated statement by [REDACTED] a resident of Brooklyn, New York, that he went with the applicant to the Legalization Office on August 22, 1987, but that the INS (Immigration and Naturalization Service) officer rejected his application because the applicant had visited his family in Bangladesh without receiving advance parole from the INS.

On April 23, 2007, the director issued a Notice of Intent to Deny (NOID). The director referred to the evidence submitted by the applicant and the testimony he gave at his interview on May 6, 2004, and indicated that the applicant had not shown that he was eligible for legalization under the LIFE Act. In particular, the director cited the applicant's interview testimony that he left the United States on June 20, 1987 to visit family in Bangladesh, and did not return to the United States until August 22, 1987, pointing out that this testimony was consistent with information provided by the applicant on his Form I-687 and his Legalization Front-Desking Questionnaire, dated August 8, 1999 [as well as on his Form for Determination of Class Membership in *CSS v. Thornburgh (Meese)*, dated May 17, 1993]. This absence interrupted the applicant's residence in the United States, the director indicated, because it exceeded the 45-day limit prescribed in 8 C.F.R. § 245a.15(c)(1) with no evidence that "emergent reasons" prevented the applicant's earlier return.¹ Nor was the absence "brief, casual, and innocent," in the director's view, within the meaning of 8 C.F.R. § 245a.16(b). According to the director, therefore, the applicant had not established his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act. The applicant was granted 30 days to submit additional evidence.

The applicant responded with an affidavit explaining that he was hospitalized in Bangladesh with acute viral hepatitis from July 29 to August 10, 1987, and returned to the United States as soon as his doctors cleared him to travel. Thus, an "emergent reason" within the meaning of 8 C.F.R. § 245a.15(c)(1) prevented the applicant from returning to the United States within the 45-day period allowed in the regulations. As evidence thereof the applicant submitted a letter from Dr. [REDACTED], Deputy Registrar of the Bangabandhu Sheikh Mujib Medical University in [REDACTED] certifying that the applicant was admitted to the hospital on July 29, 1987, diagnosed with acute viral hepatitis, and discharged on August 10, 1987.

¹ While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

On June 6, 2007, the director issued a Notice of Decision denying the application. The affidavit from [REDACTED] could not be verified, the director declared, and was not accompanied by any documentation from the hospital supporting the applicant's claim of illness. The director also noted that the applicant at his interview for LIFE legalization on May 6, 2004 stated only that he visited family in Bangladesh during his trip in 1987, with no mention that he was stricken by hepatitis during his stay. The director concluded that the applicant had not established that his return to the United States was delayed due to emergent reasons, and that his absence from the United States was brief, casual, and innocent. Accordingly, the application was denied for failure of the applicant to establish that he was continuously resident and continuously physically present in the United States during the requisite periods for LIFE legalization.

On appeal counsel reiterates the applicant's contention that he was prevented from returning to the United States within 45 days due to a sudden, serious illness, and asserts that the applicant did not mention the illness at his interview because the interviewing officer did not raise the issue. As further evidence of the illness counsel submits photocopies of two medical records from the Bangabandhu Sheikh Mujib Medical University, Department of Clinical Pathology. They include a biochemistry report and a blood report on the applicant which confirm the receiving date as July 30, 1987, the reporting date as August 1, 1987, and list various tests performed on the applicant with the results.

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).

Based on the entire record, including the additional evidence submitted on appeal, the AAO determines that the applicant has established, by a preponderance of the evidence, that an emergent reason prevented his return to the United States from Bangladesh in 1987 within the 45-day period prescribed in 8 C.F.R. § 245a.15(c)(1), and that his absence from the United States at that time was brief, casual, and innocent within the meaning of 8 C.F.R. § 245a.16(b). Thus, the specific grounds for denial as discussed in the director's decision have been overcome.

The ultimate issue in this proceeding, however, is whether the applicant has met his burden of proof by furnishing sufficient credible evidence 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. 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 time period for LIFE legalization. For someone claiming to have lived and worked in the United States since August 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 only evidence of the applicant's residence in the United States during the 1980s are the previously enumerated affidavits and sworn statements from the late 1980s and 1990s. Those documents contain numerous discrepancies and omissions, however, which cannot be overlooked. For example ██████████ claims to have resided with the applicant from 1981 to 1994, though his affidavit is dated January 7, 1988. ██████████ provides neither an address nor a telephone number in his statement dated September 17, 1988, which is therefore **completely unverifiable**. ██████████ who claims to have employed the applicant from 1982 to 1989, did not identify his company and provided neither an address nor a phone number in his statement dated December 20, 1989. Thus, his information is also unverifiable. ██████████ stated in his affidavit dated December 21, 1992 that he and the applicant lived in the same building, though his address was at ██████████ while the applicant's was (and remains) at ██████████

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.*

In this case, the applicant has not explained any of the inconsistent information discussed above. Moreover, the affidavits and sworn statements in the record are minimalist documents that provide few details about the applicant's life in the United States and his relationship with the authors over the years. They offer little or no information about how the authors met the applicant, where the applicant worked during the 1980s, and the extent of the authors' interaction with the applicant during that time. Furthermore, none of the authors submitted any evidence – such as photographs, letters, or other documentation – 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 and sworn statements have limited 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.

Based on the foregoing analysis of the record, the AAO determines 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.