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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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FILE:

[Redacted]
MSC 02 141 68130

Office: NEW YORK

Date:

APR 14 2009

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:

Self-represented

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 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 United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the country from November 6, 1986 to May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act.

On appeal the applicant asserts that the director did not properly analyze the evidence in the record, and contends that he satisfies the continuous residence and continuous physical presence requirements 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).

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 Pakistan who claims to have lived in the United States since July 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on February 18, 2002. As evidence of his continuous residence and continuous physical presence in the United States during the requisite years of the 1980s, the applicant submitted the following documentation:

- An affidavit by [REDACTED], a resident of New York City, dated August 30, 2001, stating that he met the applicant in March 1985, when the applicant moved into his building at [REDACTED], and that the applicant moved out of the building in November 1988.
- An affidavit by [REDACTED], a resident of Piscataway, New Jersey, dated September 24, 2001, stating that he met the applicant in October 1981 at the Malcolm Shabazz mosque during Friday prayer, that the applicant lived at 511 [REDACTED] at that time, that he moved in early 1985 to [REDACTED] and that the applicant was briefly absent from the United States on a trip to Pakistan in June and July 1987.
- An affidavit by [REDACTED] a resident of Bayside, New York, dated October 9, 2001, stating that he had known the applicant since October 1985, when they met at an Indian grocery store in Jackson Heights, Queens, New York, and that the applicant was briefly absent from the United States in June and July 1987 to attend his father's funeral in Pakistan.

On May 9, 2007, the director issued a Notice of Intent to Deny (NOID). The director indicated that the evidence submitted by the applicant was insufficient to establish his continuous residence and continuous physical presence in the United States during the requisite periods for LIFE legalization. The director granted the applicant 30 days to submit additional evidence.

On June 11, 2007, the applicant responded to the NOID, and submitted the following additional evidence of his residence in the United States during the 1980s:

- A notarized letter from [REDACTED], a resident of Brooklyn, New York, dated June 6, 2007, stating that he has known the applicant since January 1985, when they met during prayers at the Muslim Community Center on Ditmas Avenue.
- A notarized letter from [REDACTED], a resident of Brooklyn, New York, dated June 8, 2007, stating that he met the applicant in 1980 or 1981, when he was working at a carwash on [REDACTED]. Mr. [REDACTED] stated that he saw the applicant every time he returned to the car wash until the applicant went to work somewhere else, and that he has provided assistance to the applicant a few times in getting apartments.

On August 17, 2007, the director denied the application. The director ruled that the additional evidence was insufficient to overcome the grounds of denial, and denied the application for the reasons stated in the NOID.

The applicant filed a timely appeal, reiterating his claim to have entered the United States without inspection in July 1981, to have resided continuously in the United States in an unlawful status through May 4, 1988, and to have met the requirement of continuous physical presence in the United States between November 6, 1986 and May 4, 1988.

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 fundamental 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.

There is no contemporary documentation from the 1980s showing that the applicant resided in the United States at any time during the years 1981 to 1988. For someone claiming to have lived in the country since July 1981, it is noteworthy that the applicant cannot produce a solitary piece of documentation dating from the next seven years through May 4, 1988.

The affidavits and notarized letters in 2001 or 2007 from individuals who claim to have known the applicant in New York during the 1980s all have minimalist formats with limited input from the authors. Considering how long they claim to have known the applicant, it is remarkable how few details the authors provide about the applicant's life in the United States and their interaction with him over the years. No photographs, letters, or other materials have been submitted to document the applicant's relationship with any of the authors during the 1980s. Nor are the

affidavits and notarized letters supplemented by any documentation from the authors confirming their own presence in the United States during the 1980s. Finally, three of the authors do not claim to have known the applicant until 1985, and therefore could not attest to his residence in the United States during earlier years. For the reasons discussed above, the affidavits and notarized letters have little probative value as 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 determines 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.