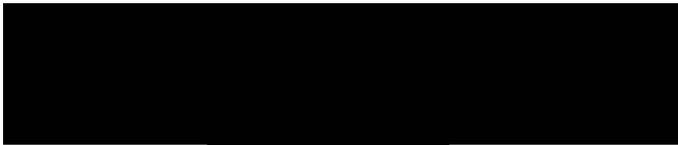


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U.S. Citizenship
and Immigration
Services

L2



FILE:

MSC 02 260 60122

Office: NEW YORK, NEW YORK

Date: FEB 26 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 forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found that the evidence in the record failed to demonstrate that it was more likely than not that the applicant resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

On appeal, the applicant indicated that the evidence does demonstrate that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, and that he is otherwise qualified to adjust to lawful permanent resident status under the LIFE Act.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

An applicant for permanent resident status under section 1104 of the LIFE Act 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* LIFE Act § 1104(c)(2)(B) and 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

- (1) 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.

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 amenability to verification. 8 C.F.R. § 245a.12(e).

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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 application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

Documentary evidence may be in the format prescribed by U.S. Citizenship and Immigration Services (USCIS) regulations. *See id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. 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 or 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

At issue in this proceeding is whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988. Here, the applicant has not met that burden.

On or near June 24, 1991, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On June 17, 2002, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record includes evidence relating to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, and that he is otherwise eligible to adjust, such as:

- 1) The Form G-325A, Biographic Information, submitted with the Form I-485 which the applicant signed on June 11, 2002. Printed beneath the signature line is this warning to the applicant: "PENALTIES: SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT." On this form, where the applicant was to list his last address outside the United States of more than one year, he provided an address in Dhaka, Bangladesh where he resided from August 1966 until September 1986.
- 2) The Notice of Intent to Deny (NOID) in which the director pointed out that the applicant indicated on the Form G-325A that he resided in Bangladesh from August 1966 until September 1986.
- 3) The rebuttal to the NOID in which the applicant indicated that at the LIFE legalization interview he provided testimony sufficient to overcome the inconsistencies in the record which the director listed in the NOID.
- 4) Also with the rebuttal the applicant included a copy of the Form I-687 on which he highlighted at item 16 the date of his most recent entry into the United States: September 22, 1986 and highlighted at item 33 the date on which he stated that he began residing in Brooklyn, New York: October 1981. The applicant was apparently asserting that this information on the Form I-687 overcame the his statement on the Form G-325A which lists his address from August 1966 through September 1986 in Dhaka, Bangladesh.
- 5) Notes from the applicant's LIFE legalization interview where he testified that he entered the United States during October 1981 without inspection and that he exited the United States in July 1986 and reentered during September 1986.

- 6) The Form I-687 which the applicant signed under penalty of perjury on July 30, 1987 and on which the applicant stated that he departed the United States during July 1986 on an unspecified date and he reentered on September 22, 1986.

The director issued a notice of intent to deny (NOID) in which she indicated that she intended to deny the application for reasons which include the following: the applicant indicated on the Form G-325A which he submitted with the Form I-485 that his address from August 1966 through September 1986 was in Dhaka, Bangladesh.

The director indicated that the discrepancy between this statement and the claim that the applicant resided in the United States throughout the statutory period cast doubt on the applicant's claim of continuous residence in the United States and on the evidence in the record. As her authority, the director cited *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), in which the Board found that doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application, that it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and that attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

Also, the director stated that the statements submitted into the record are not sufficiently detailed and credible in that they do not include, for example: any copies of identity documents of the individuals who wrote the statements, nor any documentary evidence that supports the claim that those who wrote the statements resided in the United States during the statutory period.

Thus, the director concluded that the applicant failed to submit credible evidence to support his claim of continuous residence in the United States during the statutory period.

In the NOID, the director also indicated that the applicant has an obligation to provide documentary evidence of having made an entry into the United States prior to January 1, 1982. This point in the NOID is withdrawn. There is no statutory or regulatory requirement that a LIFE legalization applicant must, in all instances, submit documentary evidence of having made an entry prior to January 1, 1982.

The director indicated further that two statements in the record submitted to support the claim that the applicant resided in the United States during the statutory period, that signed by Mohammad [REDACTED] and by [REDACTED], were determined to be fraudulent because the two individuals who notarized the statements, according to various reasons listed in the NOID, are believed to have engaged in immigration fraud. These points in the NOID are withdrawn. Each application is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). The record of proceeding in this instance consists of the material in the applicant's A-file. See 8 C.F.R. § 103.8(d). Further, if the decision will be adverse to the applicant and is based on derogatory information considered by USCIS of which the

applicant is not aware, he shall be advised of this and offered an opportunity to rebut the information and present evidence in his own behalf before the decision is rendered. *See* 8 C.F.R. § 103.2(b)(16)(i). The applicant's A-file does not contain evidence to support the finding that these two statements are fraudulent, nor does it include evidence that the applicant was ever provided notice of any such derogatory information.

The director indicated that the authenticity of [REDACTED]'s statement is called further into question in that the statement asserts that [REDACTED] has personal knowledge of the applicant residing in the US from 1981 forward but USCIS records indicate that [REDACTED] did not enter the United States until December 1990. This point in the NOID is withdrawn. Again, the record of proceeding in this instance consists of the material in the A-file. *See* 8 C.F.R. § 103.8(d). If the decision will be adverse to the applicant and is based on derogatory information considered by USCIS of which the applicant is not aware, he shall be advised of this and offered an opportunity to rebut the information and present evidence in his own behalf before the decision is rendered. *See* 8 C.F.R. § 103.2(b)(16)(i). The applicant's A-file does not contain evidence to support the finding that Mr. [REDACTED] made his initial entry into the United States in December 1990, nor does it include evidence that the applicant was ever provided notice of any such derogatory information.

The applicant's reply to the NOID was not timely submitted. The director denied the application based on the reasons set forth in the NOID.

On appeal, the applicant re-submitted his rebuttal packet and additional evidence to support his claim that he resided continuously in the United States throughout the statutory period. He indicated that any discrepancies in the record were corrected during the LIFE legalization interview. He also stated that the District Adjudications Officer (DAO) failed to make a good faith effort to verify the information on the statements which he submitted into the record, indicating that if he had the DAO would have determined that the information was accurate. In the statement submitted with his rebuttal, the applicant indicated that he was not aware that the individual who notarized [REDACTED]'s statement and the individual who notarized [REDACTED]'s statement had been accused of immigration fraud. He asserted that the information on all the statements which he submitted into the record was accurate.

The Form G-325A lists the applicant's address from August 1966 through September 1986 as [REDACTED], Bangladesh. This contradicts that applicant's claim that he resided in the United States throughout the statutory period.

This discrepancy cast serious doubt on all the evidence in the record, including the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. As noted above, such inconsistencies may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States during the statutory period. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

This office finds that the various statements and affidavits in the record which were submitted to substantiate the applicant's claim of continuous residence in the United States during the statutory

period are not objective, independent evidence such that they might overcome the deficiencies in the record relating to the applicant's claim that he maintained continuous residence in the United States from a date prior to January 1, 1982 and throughout the statutory period, and that these documents are not probative in this matter.² The applicant's LIFE legalization interview testimony regarding having entered the United States in 1981 and in 1986, and his statements on the Form I-687 that he began residing in New York during October 1981 and that he made his most recent entry into the United States during September 1986 are also not objective, independent evidence such that they might overcome the discrepancies in the record regarding the applicant's claim that he resided in the United States throughout the statutory period. There is no contemporaneous evidence in the record that might be considered independent, objective evidence that the applicant resided in the United States during the statutory period.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

An application that fails to comply with the technical requirements of the law may be denied on those grounds by the AAO even if the Service Center or District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Beyond the decision of the director, the applicant specified on the Form I-687 that he departed the United States during July 1986 and that he reentered the United States on September 22, 1986. He repeated at his LIFE legalization interview that he departed the United States in July 1986 and reentered during September 1986. The date that the applicant departed in July 1986 is not specified in the record. Yet, even if the applicant departed on July 31, 1986 by reentering on September 22, 1986, the applicant was outside the United States for 53 days in a single absence during the statutory period. The Form I-687 indicates that the applicant exited the United States in July 1986 to visit his family in Bangladesh. There is nothing in the record to indicate that he remained outside the United States for over 45 days because emergent reasons left the applicant unable to return within 45 days. Thus, the record indicates that the applicant is also not able to establish continuous residence in the United States throughout the relevant period due to a single absence of over 45 days during the statutory period. *See* 8 C.F.R. § 245a.15(c).

² Any claim that USCIS' officials have an obligation to contact the individuals who have signed the statements and affidavits in the record is not correct. The burden is on the applicant to provide affidavits that are sufficiently detailed and credible. Also, once USCIS has determined that the applicant has provided evidence that contradicts his claim that he resided continuously in the United States throughout the statutory period, as in this case, only independent, objective evidence of having resided in the United States will overcome such deficiencies.

The applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act for the reasons stated above, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.