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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:

MSC 01 338 60124

Office: NEW YORK

Date:

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IN RE: Applicant:

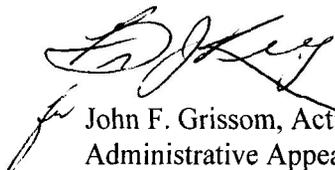
APPLICATION:

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.


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 entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988.

On appeal counsel asserts that the director did not give proper weight to the documentation submitted by the applicant, which establishes his continuous residence in the United States during the requisite period 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).

“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.”

“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 resided in the United States since June 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on September 3, 2001. At that time the record included the following evidence of the applicant’s residence and physical presence in the United States during the years 1981-1988, which had been submitted along with a Form I-687 (application for temporary resident status) and a “Form for Determination of Class Membership in CSS v. Thornburgh (Meese)” in November 1992:

- A Kuwait Airways ticket, issued on June 10, 1987, identifying the applicant as the passenger on a flight from New York to London on June 13, 1987.
- “Affidavits of Residence” by [REDACTED] and [REDACTED], dated November 5 and 12, 1992, stating that they had resided with the applicant and shared expenses at [REDACTED] in Brooklyn, New York – the former in [REDACTED] from July 1981 to December 1984, and the latter in [REDACTED] from January 1985 to the present (November 1992).

An “Affidavit of Witness” by [REDACTED], a resident of Brooklyn, dated November 12, 1992, stating that he was a friend of the applicant and had personal

knowledge the applicant resided at [REDACTED] in Apt. [REDACTED] from July 1981 to December 1984, and in [REDACTED] from January 1985 to the present (November 1992).

An employment affidavit by [REDACTED], president of [REDACTED] Contracting Corporation, dated November 2, 1992, stating that the applicant worked with the company from July 1981 to May 1987, 40 hours a week at a pay rate of \$4.00/hour.

An employment affidavit by [REDACTED] of [REDACTED], dated November 10, 1992, stating that the applicant worked for the company as a painter from September 1987 to September 1989.

At his interview for LIFE legalization on January 27, 2004, the applicant submitted the following additional documentation:

- Affidavits by [REDACTED]s and [REDACTED]ls, dated January 26, 2004, stating that they had known the applicant as a friend since August and November 1981, respectively.

A letter by [REDACTED] dated January 26, 2004, stating that she had known the applicant since 1981 and that he sometimes did painting and other work at her house in Brooklyn.

A letter by [REDACTED] dated January 2004, stating that the applicant had been a customer at his decorating store in Brooklyn since 1981.

On August 1, 2007 the director issued a Notice of Intent to Deny (NOID), indicating that there was insufficient credible evidence in the record to establish the applicant's continuous residence in the United States during the requisite period for LIFE legalization. The director granted the applicant 30 days to submit additional evidence.

In response to the NOID the applicant submitted further documentation, including:

- A letter by [REDACTED], dated August 23, 2007, stating that the applicant repaired a roof leak on his property at [REDACTED] in Brooklyn in December 1985.

Letters by [REDACTED] and [REDACTED], dated August 24, 2007, stating that they met the applicant when he came to the United States in 1981 and that they had kept in touch over the years at the local mosque and at social occasions.

- A letter by [REDACTED], dated August 25, 2007, stating that the applicant has been a regular customer at his grocery and meat store in Brooklyn since he opened for business in 1985, and that he and the applicant have also socialized at community events.

On September 23, 2007 the director issued a Notice of Decision denying the application. The director indicated that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial, and that the evidence of record failed to establish the applicant's eligibility for adjustment of status under the LIFE Act.

On appeal counsel asserts that the director did not give proper weight to the documentation submitted by the applicant. In counsel's view, the evidence of record suffices to establish the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

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 he entered the United States unlawfully before January 1, 1982, and resided continuously in the United States in an unlawful status through May 4, 1988. The AAO determines that he has not.

The only contemporary document from the 1980s that indicates the applicant was present in the United States during the requisite time period for LIFE legalization is the airline ticket issued to the applicant in June 1987 for travel from New York to London. While this document represents credible evidence of the applicant's physical presence in the United States in June 1987, it does not demonstrate that the applicant had an established residence in the United States at that time. For someone claiming to have lived and worked in the United States since June 1981, it is noteworthy that the applicant is unable to produce any primary or secondary evidence of his residence, or even his presence, in the United States during the following six years.

The employment affidavits from [REDACTED] and [REDACTED], who claim that the applicant worked in their businesses during the 1980s, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not state the applicant's address during the periods of employment, do not declare whether the information was taken from company records, and do not indicate whether such records are available for review. In addition, the affidavit from [REDACTED] did not describe the applicant's job duties. Furthermore, no earnings statements, pay stubs, or tax records have been submitted to demonstrate that the applicant was actually employed by either company during the years indicated. The AAO

determines, therefore, that the employment affidavits have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the other affidavits and letters in the record – ranging in time from 1992 to 2007 – from individuals who claim to have lived with the applicant, hired him on a private basis, had him as a customer, or simply socialized with him during the 1980s, all have minimalist or fill-in-the-blank formats with limited personal input from the authors. Considering how long they claim to have known the applicant, the authors provide few details about how they met him and the nature and extent of their interaction with him over the years. The affidavits and letters are uniformly thin on substance, providing remarkable little information about the applicant's life in the United States during the 1980s. Three of the authors – [REDACTED] and [REDACTED] – do not claim to have known the applicant before 1985, and therefore could not attest to his residence in the United States in previous years. Furthermore, none of the affidavits or letters is supported by any documentary evidence – such as photographs, letters, and the like – demonstrating the applicant's relationship with any of the authors in New York during the 1980s. For the reasons discussed above, the AAO determines that the affidavits and letters have limited probative value. They are not persuasive 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 concludes 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.