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U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 02 245 60121

Offices: GARDEN CITY

Date: **FEB 27 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:

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

On appeal the applicant asserts that the director did not properly evaluate the affidavits in the record and that he has submitted sufficient documentation to establish his eligibility 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.” (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 June 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 2, 2002.

In a Notice of Intent to Deny (NOID), dated November 21, 2007, the director indicated that the applicant had not submitted sufficient credible evidence 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. The applicant was granted 30 days to submit additional evidence.

In response, the applicant reiterates his claim that he has submitted sufficient evidence to establish that he entered the United States in 1981 and resided continuously in the country in an unlawful through the period required for legalization under the LIFE Act. The applicant submits additional affidavits.

On January 8, 2008, the director issued a Notice of Decision denying the application on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. The director noted that the applicant submitted only photocopied affidavits with his response to the NOID.

On appeal, the applicant asserts that he has submitted sufficient credible evidence to establish that the applicant meets the continuous residence requirement for LIFE legalization, but that the director did not properly evaluate the evidence of record. The applicant submits some originals of the affidavits previously in the record.

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 documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988 consists of the following:

- A notarized letter of employment from [REDACTED] president of [REDACTED] Master Craftsmen in Brooklyn, New York, stating that the applicant was employed from August 20, 1981 to April 30, 1987, as a construction helper.
A photocopied letter of employment from [REDACTED] General Contracting Corporation in Brooklyn, New York, stating that the applicant was employed from July 15, 1987 to the present, as a construction helper.
A photocopied letter from [REDACTED], general secretary of Bangladesh Society Inc. New York, in Elmhurst, New York, dated December 14, 2007, stating that the applicant "is personally known to me", that the applicant came to the United States in 1981, and that "our record indicates that he became member of the Society in the year 1981."
A letter from [REDACTED] president of Bangladesh American Educational and Cultural Society of North America, in Brooklyn New York, dated May 16, 2007, stating that the applicant was an active member of the organization since its inception, and that the applicant "is known to have come to the United States prior to 1981.
- A series of letters and affidavits – dated in 1992, and 2001 – from individuals who claim to have resided with or otherwise known the applicant in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through

May 4, 1988. The documentation submitted by the applicant as evidence of his continuous residence in the United States consists mostly of photocopied letters and affidavits. The applicant submitted only one original letter of employment prepared on a photocopied letterhead and original signature of the notary. Since photocopied documents can be easily altered or forged, the reliability and credibility of the letters and affidavits submitted in the record is suspect and have little probative value.

The photocopied letters of employment from ██████████ Master Craftsmen and ██████████ General Contracting Corporation do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letters vaguely stated that the applicant was employed as “construction helper” but did not specify his duties and responsibilities. The letters were not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the employment documents have little probative value. They are not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The letter from ██████████ general secretary of Bangladesh Society Inc. New York, in Elmhurst, New York, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter from ██████████ affirmed that the applicant came to the United States in 1981 and that “our record” indicate that the applicant became a member of the society in 1981, but did not identify which record, where the applicant lived at any point in time between 1981 and 1988, how and when he met the applicant, and whether his information about the applicant was based on ██████████ personal knowledge, the society’s records, or hearsay. Since the letter does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), it has little probative value. The letter is 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 notarized letters and affidavits in the record from individuals who claim to have resided with or otherwise known the applicant since the 1980s, they have minimalist or fill-in-the-blank formats with very little input by the authors. The authors provide very few details about the applicant’s life in the United States, such as where he worked and their interactions with him over the years. Nor are the letters and affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors’ personal relationships with the applicant in the United States during the 1980s. It is noted that all the letters and affidavits in the record are photocopies. The applicant did not submit the originals in the file. In addition,

██████████ did not indicate personal knowledge of the applicant's residence in the United States during the 1980s, but that it was known that the applicant came to the United States in 1981. Mr. ██████████ did not identify the source of his knowledge that the applicant came to the United States in 1981. In view of these substantive shortcomings, the AAO finds that the affidavits and letters 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.

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.