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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 169 63412

Office: NEW YORK

Date:

JAN - 5 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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. 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 had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement.

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).

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b).

To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on March 18, 2002. On September 27, 2007, the director denied the application. The applicant, through counsel, filed a timely appeal from that decision on October 26, 2007.

The applicant, a citizen of Bangladesh, claims to have initially entered the United States as a nonimmigrant visitor on December 15, 1980, and to have departed the United States on only one occasion during the requisite time period – from September 9, 1987 to October 10, 1987 - in order to visit a friend in Mexico.

The issue in this proceeding is whether the applicant has established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

The record reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

1. A letter from [REDACTED] dated November 3, 1993, stating that he had known the applicant since March 16, 1981, and that the applicant resided with him at [REDACTED] Brooklyn, New York until May 15, 1984.
2. A letter from [REDACTED] of Brooklyn, New York, January 21, 1994, stating she has a residence in Mexico and that the applicant visited her there from September 12, 1987 to October 4, 1987.
3. A letter from [REDACTED] dated January 25, 1993, stating that she and her family had known [REDACTED] since 1981. In a second letter, dated August 16, 2007, [REDACTED] states that she had known the applicant since 1981 when he was working with her husband in construction.
4. A letter, dated January 12, 1994, from [REDACTED] pastor of Neuman Memorial United Methodist Church, dated January 12, 1994, stating that the applicant has worked as a painter and roofer on several occasions for the church.
5. A letter from [REDACTED] of Brooklyn New York, dated January 18, 1994, stating that the applicant had been his roommate from June 1984 to December 1991 in Brooklyn, New York.
6. A letter from (signature illegible), dated March 1, 2004, stating that the applicant had been an acquaintance since 1985.
7. A letter, from [REDACTED] dated March 6, 2004, stating that he had known the applicant for a long time.
8. A letter from [REDACTED], Secretary of [REDACTED] Masjid in Brooklyn, New York, dated March 6, 2004, stating that the applicant is a pious Muslim who regularly attends the special religious programs at the Mosque, and that "...we have known him for a long time...."
9. A letter from [REDACTED], notarized on March 8, 2004, stating that he had known the applicant since 1984.
10. A letter from [REDACTED], dated March 14, 1994, stating that the applicant visited him in Mexico from September 4, 1987 through October 1987 - having traveled by car from New York.
11. A letter from [REDACTED], dated August 21, 2007, stating that he had known the applicant since late 1981, that they used to participate in different occasions and used to pray in the same place weekly.
12. Envelopes addressed to the applicant in the United States with illegible postmark dates, or postmarked after the requisite dates.

The affiants in Nos. 3 and 9, above, are vague as to how they date their acquaintances with the applicant, how often and under what circumstances they had contact during the requisite period, and lack details that would lend credibility to their statements. Similarly, the affiants in Nos. 1 and 5, merely state that the applicant resided with them but lack any other details that would lend credibility to their direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, these statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite time period. Nos. 6, 7, 8, and 12, above, have no evidentiary weight or probative value.

The signature on No. 6 is illegible, and Nos. 7 and 8 do not provide any details regarding the date the affiants met the applicant. None of the postmarks in No. 12. have a legible date during the required time period. Nos. 2 and 10 attest to the applicant having traveled to Mexico from September to October 1987; however, it is not clear as to whether the applicant visited [REDACTED] or [REDACTED] during that time period.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, Selective Service card, automobile, contract, and insurance documentation, deeds or mortgage contracts, tax receipts, or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"). These documents lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from 1982 through 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

It is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

It is noted that the record reflects that the applicant was arrested on February 27, 1997, in New York, on a charge of "PATR PROST." In any future proceedings before Citizenship and Immigration Services (CIS), the applicant must provide the final court disposition of this arrest and any other charge(s) against him.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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