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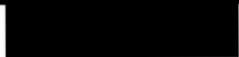
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Services

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FILE:



Office: NEW YORK Date:

JAN - 5 2009

MSC 03 196 62367

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 office which originally decided your case. 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 Acting Director, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Counsel does not submit additional evidence on appeal.

On appeal, counsel states that the director's decision was in error and that the applicant has established by a preponderance of the evidence that he resided unlawfully in the United States for the requisite period.

An applicant for permanent resident status 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 and through May 4, 1988. 8 C.F.R. § 245a.11(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. 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 petitioner 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 (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 or petition.

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).

On April 14, 2003 the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act. The record contains correspondence to the applicant from Fingerhut, dated October 15, 1981; a receipt from Argosy Bookstore, listing the applicant's name and dated September 21, 1981; a receipt from The Bike Stop, listing the applicant's name and dated May 4, 1982; a letter from Western Union welcoming the applicant as a

preferred customer and dated March 28, 1983; a letter from the Sanyo Fisher Service Corporation, dated May 8, 1985, urging the applicant to buy a service contract for a recent VCR purchase; a receipt from Complete Dental Care, listing the applicant's name and dated February 18, 1986; a letter from [REDACTED] of The Prudential Insurance Company requesting information for a life insurance quote; and, a letter from [REDACTED] of Catholic New York Company addressed to the applicant dated January 14, 1987, providing advertising information. The record also contains a number of other original, contemporaneous documents which do not pertain to the required period, as well as several affidavits submitted by the applicant.

On July 16, 2007, the director sent the applicant a Notice of Intent to Deny (NOID). The director stated that the applicant had not submitted sufficient evidence of unlawful residence, and detailed inconsistencies in the applicant's testimony and affidavits. The director noted that there were inconsistencies in the record pertaining to the applicant's claimed addresses in the United States. The director also noted that the applicant's Form G-325A indicates that he resided in Bangladesh from October 1964 until October 1987. The director determined that this evidence contradicts the applicant's claim that he had resided continuously in the United States from prior to January 1982.

In response, counsel for the applicant asserts that the evidence submitted is credible, and that any inconsistencies are because the applicant speaks English as a second language.

On appeal, the applicant reasserts that he has provided sufficient credible evidence in the form of affidavits.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters and affidavits as evidence to establish the requisite continuous residence in support of his Form I-485 application. The AAO reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Contrary to the counsel's assertion, the applicant has provided questionable documentation. The applicant submitted a Biographic Data Form, G-325A, signed on March 26, 2003, stating that he resided at [REDACTED] from October 1964 until October 1987. Clearly, this evidence points to the applicant's presence in Bangladesh. Yet, the applicant claims to have resided in the United States since prior to January 1, 1982, and has submitted affidavits, receipts, and letters in an attempt to establish that he has resided continuously in the United States from prior to January 1, 1982.

The applicant has failed to reconcile these discrepancies, and has failed to provide reliable evidence to overcome the deficiencies in the evidence submitted. The above unresolved discrepancies cast considerable doubt on whether the applicant's claim that he entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies,

will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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