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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 363 63945

Office: GARDEN CITY

Date:

JAN 05 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.

for John F. Vaughan
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. The decision 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, counsel asserts that the director did not fully evaluate the evidence submitted and failed to give due weight to the affidavits. In counsel's view, the documentation in the record is sufficient to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988.

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 April 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 28, 2001.

In a Notice of Intent to Deny (NOID), dated August 9, 2007, the director indicated that the applicant had not submitted credible evidence demonstrating 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.

Counsel submitted a timely response to the NOID, and five additional affidavits as evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988.

On September 12, 2007, the director issued a Notice of Decision denying the application. The director indicated that the applicant failed to submit additional evidence and denied the application for the reasons stated in the NOID.

On appeal, counsel asserts that the director did not consider the documentation submitted by the applicant in response to the NOID.

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

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 from [REDACTED] of [REDACTED] in Brooklyn, New York, dated July 16, 2004, stating that he has known the applicant since 1986 when he was a member of the Masjid committee, and that he had seen the applicant attend regular Juma prayers and other Islamic holidays since 1986.

An affidavit by [REDACTED] owner of [REDACTED] in Brooklyn, New York, dated July 4, 1992, stating that the applicant was employed as a salesman from May 1981 to October 1989 at an hourly rate of \$3.50.

A series of receipts dated from 1981 to 1986, with handwritten notations of the applicant's name indicating rent payments for [REDACTED] (city unspecified).

Eleven affidavits and letters from friends and acquaintances dated in 1992, 1993, 2001, 2004, and 2007, attesting that they have knowledge that the applicant had resided in the United States since the 1980s, in most cases since the early 1980s.

Photocopies of letter envelopes addressed to the applicant with illegible postmarks.

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

The letter from [REDACTED] 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 [REDACTED], dated July 16, 2004, vaguely stated that he had known the applicant since 1986 while the applicant was a member of the Masjid committee, and that the applicant had attended regular Juma prayers and other Islamic holidays since 1986, but did not indicate when the applicant became a member of the mosque. [REDACTED] did not identify his position with the Masjid, or indicate in what capacity he authored the letter. The letter did not state where the applicant lived at any point in time during the 1980s, and did not specify whether [REDACTED] information about the applicant was based on his personal knowledge, the mosque's records, or hearsay. Since the letter did not comply with sub-parts (B), (C), (D), 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.

The affidavit of employment from [REDACTED], owner of [REDACTED] in Brooklyn, New York, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the affiant did not provide the applicant's address during the period of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. Nor was the affidavit 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 letter has limited probative value. It is 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.

As for the other affidavits and letters in the record – dating from 1992, 2001, 2004, and 2007 – from acquaintances who claim to have resided with or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input by the authors. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provide remarkably little information about his life in the United States, such as where he worked, and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationship with the applicant in the United States during the 1980s. In addition, some of the affiants do not claim to have known the applicant prior to 1982. In view of these substantive shortcomings, the affidavits 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.

The rental receipts dated from 1981 to 1986 have handwritten entries with no date stamps or other official markings to authenticate the dates they were written. Some of the receipts dated in 1985 and 1986 do not identify the rental property address (identified on others as [REDACTED]). The receipts did not specify the periods for the rental payments. Nor were the receipts

supplemented by a rental contract or other agreement showing that the applicant resided at that address. *In light of these substantive shortcomings, the receipts have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period for adjustment of status under the LIFE Act.*

The photocopies of the letter envelopes addressed to the applicant at [REDACTED] Brooklyn, New York, and [REDACTED] Ozone Park, New York, have illegible postmark dates. Though one of the postmarks may read "JAN 82," it also appears the date may have been altered by hand and the original envelope has not been submitted for a more precise determination. In view of these substantive deficiencies, the photocopies of the letter envelopes have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period for adjustment of status under the LIFE Act.

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.