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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: NEW YORK CITY Date: JUL 02 2009
MSC 02 050 63762

IN RE: Applicant: [REDACTED]

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: SELF-REPRESENTED

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. The decision is now before the Administrative Appeals Office (AAO) on appeal. 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 he did not receive the Notice of Intent to Deny (NOID) sent by the director and therefore did not respond to the NOID. The applicant asserts that he has submitted sufficient documentation to establish his claim, however, if the director deems the evidence in the record insufficient, that the director should resend the NOID and grant him additional time to respond.¹

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).

¹ The applicant acknowledged receipt of the Notice of Decision denying his application, dated July 28, 2008, which was mailed to his address of record at [REDACTED], Brooklyn, New York, but stated that he did not receive the NOID, dated June 20, 2008, which was mailed to the same address. The record reflects that the NOID mailed to the [REDACTED], Brooklyn, New York address was returned as “not deliverable as addressed,” despite the fact that the applicant stated on the Form I-290B that he was still residing at the [REDACTED] address in Brooklyn at the time the NOID was issued. There is no evidence in the record that the applicant filed a change of address form in June or July 2008.

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 September 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on November 19, 2001.

In a Notice of Intent to Deny (NOID), dated June 20, 2008, 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.

The applicant did not submit a response to the NOID and on July 28, 2008, the director issued a decision denying the application based on the reasons stated in the NOID.

On appeal, the applicant asserts that he did not receive the Notice of Intent to Deny (NOID) sent by the director and therefore did not respond to the NOID. The applicant asserts that he has submitted sufficient documentation to establish his claim, however, if the director deems the evidence in the record insufficient, that the director should resend the NOID and grant him additional time to respond. The applicant did not submit any documentation with the appeal.

On May 6, 2009, the AAO sent a NOID to the applicant at his current address of record, notifying him of the evidentiary deficiencies in the record regarding his claim of continuous residence in the United States during the requisite period. The applicant was granted 30 days to submit additional evidence in support of his application. To this date, the applicant did not respond to the NOID and did not submit additional documentation. The AAO will consider the record as complete and will adjudicate the application based on the evidence 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 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 letter of employment from Rafique Construction Company in Brooklyn, New York, dated June 5, 1991, stating that the applicant was employed as a laborer since 1986, and was paid \$250.00 per week.

A letter from [REDACTED], president of the Islamic Council of America, Inc. in New York City, dated June 19, 1991, stating that he has known the applicant as a member of the Islamic Council from 1981 to the present (1991), and that he regularly attended the mosque every Friday.

Letters and affidavits dated in 1991, from four individuals who claim to have resided with or otherwise known the applicant 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 affidavit in this decision.

The applicant has provided conflicting dates regarding her initial entry into the United States. At her LIFE legalization interview on February 27, 2007, the applicant testified that she entered the United States in 1981. On the Form For Determination of Class Membership in Catholic Social Services (CSS) v. Meese, and a corroborative affidavit dated May 23, 1990, however, the applicant stated that she entered the United States in December 1979, and resided continuously in the country thereafter, with one trip to Mexico from May 8, to June 1, 1987. On her Form I-687 (application for status as a temporary resident) dated May 11, 1990, the applicant stated that she last entered the United States in December 1979, and thereafter was absent from the country only once, on a trip to Mexico from May 8, to June 1, 1987. On the same form the applicant stated that her son, [REDACTED], was born in Mexico on March 8, 1980. The applicant did not provide any explanation as to how she could have given birth to a child in Mexico at the same time she claimed to have been physically present and residing in the United States.

The applicant has also provided conflicting information regarding her residential addresses in the 1980s. On her Form I-687 dated May 11, 1990, the applicant listed the following addresses in the United States since arriving in the country:

California, from 1979 to 1988; and

- [REDACTED] Pacoima, California, from 1988 to the present (1990).

On the Form G-325A (Biographic Information) dated May 29, 2002, submitted with her Form I-485, the applicant listed the following addresses in the United States during the 1980s:

Pacoima, California, from 1981 to 1984;

- Pacoima, California, from 1984 to 1987; and
- Pacoima, California, from 1987 to 1992.

On the Affidavit of Witness submitted by [REDACTED] a resident of Arleta, California, dated May 25, 2002, the affiant listed the following as the applicant's addresses in the United States during the 1980s:

Arleta, California, from July 1981 to July 1987; and

- North Hollywood, California, from July 1987 to July 1992.

The conflicting information regarding the applicant's date of entry into the United States and her residences in the United States during the 1980s, undermines the applicant's claim that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The affidavits from [REDACTED], and [REDACTED] all have minimalist or fill-in-the-blank formats with vague and general information about the applicant. The affidavits provide remarkably few details about the applicant's life in the United States, such as where she worked, and her interaction with the affiants over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. In addition, one of the affiants only claims to have known the applicant since 1985, and another affiant provided information about the applicant's residences in the United States during the 1980s that contradicted information provided by the applicant herself about her residential addresses during the same period. In view of these substantive shortcomings, the AAO finds that 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 photocopies of the letter envelopes addressed to the applicant at [REDACTED] Pacoima, California, have illegible postmarks which look like they may have been altered by hand. The original envelopes have not been submitted. Thus, the photocopies of the letter envelopes have no 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 forgoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that she 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.