

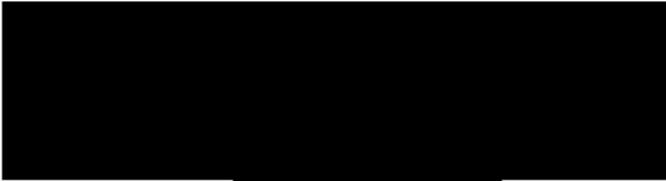
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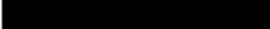
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK CITY

Date:

MAR 04 2009

MSC 03 088 60060

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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. 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 counsel asserts that the director did not properly evaluate the evidence submitted by the applicant in support of his claim that he meets the continuous residence requirement for legalization under the LIFE Act. In counsel's view, the evidence of record is sufficient to establish the applicant's claim. Counsel submits no additional documentation with the appeal.

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 Sri Lanka 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 December 27, 2002.

In a Notice of Intent to Deny (NOID), dated September 14, 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 director noted that of the seven affidavits submitted by the applicant, only one of the affiant attests to the applicant’s residence in the United States before January 1, 1982. The director also noted that some of the affidavits contradicted other documents in the record. The applicant was given 30 days to submit additional evidence.

The applicant submits a response through his counsel with additional documentation. On January 25, 2008, the director issued a Notice of Decision denying the application. The director noted that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. The director noted that one of the documentation – a letter of employment from [REDACTED] is suspect as the

company was not in existence during the period the applicant allegedly was employed there and that the letter of employment is inconsistent with information on the Form I-687 (application for status as a temporary resident) in the record. The director indicated that the inconsistencies in the record casts doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously through May 4, 1988.

On appeal counsel asserts that the director did not properly evaluate the evidence submitted by the applicant in support of his claim that he meets the continuous residence requirement for legalization under the LIFE Act. Counsel further asserts with regards to the employment letter from [REDACTED], that the applicant did not list the employer on his Form I-687 he filed in 1989 because his employment with the company was intermittent and not regular consistent employment. In counsel's view, the evidence of record is sufficient to establish the applicant's claim. Counsel submits no additional documentation in support of his assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 letter of employment from [REDACTED]s, dated August 1, 2002, stating that the applicant was employed from September 1981 through March 1991, under the corporation name [REDACTED], and later converted to [REDACTED]
- A letter of employment from [REDACTED] president [REDACTED]s in Staten Island, New York, dated December 6, 1989, stating that the applicant was employed as his personal assistant from July 1, 1989 to the present. Mr. [REDACTED] also states that the applicant has been his close friend for the past five years.
- A letter of employment from [REDACTED] – [REDACTED] in Staten Island, New York, dated October 10, 2007, stating that the applicant was employed on a part time basis from 1984 to the present (2007).
- Affidavits – dated in 2002 and 2008 – from six individuals who claim to have known the applicant resided in the United States since the early 1980's.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The submitted evidence is not probative, and credible.

The employment letters from [REDACTED] and [REDACTED], do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. The director, in the NOID, noted discrepancy between the date [REDACTED] was registered and the dates the applicant claimed to have begun work there. The director also noted that the applicant did not list [REDACTED] as one of his employers in the 1980's.

According to records from the New York State Department of State, Division of Corporations, [REDACTED] was registered in Richmond County on August 21, 1986. Thus, while the applicant claims to have begun work at [REDACTED] in 1984, the company does not appear to have been registered before August 21, 1986, at the earliest. Additionally, the applicant did not list [REDACTED] as one of his employers in the United States during the 1980's. According to information on a Form I-687 in the file, the applicant listed the following as his employers during the 1980s:

- Construction Job (no employer listed), painting, from July 22, 1981 to August 1984;
- [REDACTED], delivery job, from September 1984 to February 1989; and
- [REDACTED] delivery job, from March 1989 to the present (May 1989).

The employment information listed by the applicant on his Form I-687 is contradictory to the letters of employment from [REDACTED] and [REDACTED]. For the reasons discussed above, the AAO determines that the employment letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The inconsistencies noted above, and the applicant's inability to reconcile these inconsistencies, undermine the veracity of his claim of continuous residence during the period required for legalization under the LIFE Act, and the reliability of other documentation in the record that attest to the applicant's continuous residence in the United States during the requisite period. 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 applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence – consisting of affidavits – from individuals who claim to have known the applicant in the United States during the 1980's is suspect and non substantive. It is noted that only one affiant – [REDACTED] places the applicant in the United States before January 1, 1982. However, the two letters and an affidavit submitted by [REDACTED] are contradictory to each other and contradictory to information on the Form I-687 in the file. For example, in the letter dated August 1, 2002, [REDACTED] claims that the applicant was employed at [REDACTED] from September 1981 through March 1991. In the affidavit dated September 11, 2007, [REDACTED] claims that he met the applicant in Queens, New York in 1981, when the applicant fixed a flat tire for him, that they became friends, and that the applicant started working for his company, [REDACTED] on July 1, 1989. No mention was made of the applicant's alleged employment at [REDACTED]. In the letter dated October 7, 2007, [REDACTED] claims that the applicant had been "in my employ from September 1981 through 1991." Thus, the credibility and reliability of the three documents is questionable. The inconsistencies discussed above cast considerable doubt on the credibility and reliability of the other affidavits in the record. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* Thus, 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 period for legalization 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, 8 U.S.C. § 245A(a)(2)(A). 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.