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U.S. Citizenship  
and Immigration  
Services

[REDACTED]

L2

FILE:

[REDACTED]

Office: NEW YORK CITY

Date:

**MAR 06 2009**

MSC 03 246 62612

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:

[REDACTED]

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. 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 the applicant asserts that the director did not properly evaluate the affidavits he submitted in support of his application. In the applicant's view the documentation of record is sufficient to establish that he meets the continuous residence requirement for legalization under the LIFE Act.

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 August 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 3, 2003.

In a Notice of Intent to Deny (NOID) dated June 23, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish his continuous residence in the United States during the requisite period for legalization under the LIFE Act. The director indicated that the applicant’s claim that he entered the United States in 1981 is contradicted by documentation in the record that indicates the applicant lived in Bangladesh from the time of birth until August 1984. The director noted that this inconsistency undermines the credibility of the applicant’s claim that he has met the residence requirement for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

The applicant responds to the NOID and submits an additional affidavit attesting to his residence in the United States since 1981. On September 28, 2007, the director issued a Notice of Decision denying the application based on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal the applicant asserts that the director did not properly evaluate the affidavits he submitted in support of his application. In the applicant's view the documentation of record is sufficient to establish that he meets the continuous residence requirement for legalization under the LIFE Act. The applicant submits no additional evidence on appeal.

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 during the requisite period for LIFE legalization consists of the following:

- An affidavit from [REDACTED], dated May 8, 2003, stating that he has known the applicant since September 1981, that he helped the applicant get a job as a construction worker at [REDACTED] in Brooklyn, New York, and that the applicant worked at this company until September 1985.
- A photocopied affidavit of employment from [REDACTED], in Loxahatchee, Florida, dated August 10, 1998, stating that the applicant was employed as a laborer harvesting vegetables from October 1985 to April 1986, and was paid \$3.50 per hour.
- A photocopied affidavit of employment from [REDACTED] in New York City, dated November 20, 1988, stating that the applicant "has been in my employment as January 28, 1988", and was paid \$200.00 per week for a "fifty hour week."
- Affidavits – dated in 1990, and 2005 – from individuals who claim to have known the applicant resided in the United States during the 1980s.
- A letter from [REDACTED], in Brooklyn, New York, dated July 2, 2007, stating that the applicant is "known to me since long period of time," that the applicant was one of the pioneer people of the organization and the he had knowledge that the applicant came to the United States in 1981.

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

Records from the United States Citizenship and Immigration Services (USCIS) show that the applicant has another A-file with the agency – [REDACTED]. This file contains information that calls into question the veracity of the applicant's claim to have entered the United States in August 1981 and resided continuously in the country in an unlawful status through May 4, 1988. A Sworn Statement executed by the applicant on March 9, 1993, and a Memo to File by an immigration inspector at JFK airport in New York City on the same date, indicate that the applicant arrived at the airport on March 9, 1993, and presented a passport with a B-1/B-2 visa issued at the United Embassy in Dhaka, Bangladesh, on March 15, 1992, and requested admission into the United States. The applicant stated in the Sworn Statement that he left his country to come to the United States on March 9, 1993 to seek political asylum. The immigration officer at the airport refused him admission because the applicant procured a fraudulent passport and visa under the name of [REDACTED], and placed him in exclusion proceedings. On May 20, 1993, the applicant filed a Form I-589 (request for asylum) with the Executive Office of Immigration Review (EOIR) asking for withholding of removal. On the Form I-589, the applicant indicated in response to question #12, that he arrived in the United States on March 9, 1993. On the Form G-325A (Biographic Information) the applicant submitted with the Form I-589, the applicant indicated his last address outside the United States of more than one year as – [REDACTED] from May 1953 (month and year of birth) to March 3, 1993. The applicant indicated his last occupation abroad as [REDACTED] from April 1984 to March 1993. The information on the two forms, the information on the passport the applicant used to travel to the United States and the applicant's own sworn statement on March 3, 1993, suggests that the applicant's first entry into the United States was on March 3, 1993. Thus, the applicant is statutorily ineligible to adjust status under the LIFE Act because he did not enter the United States before January 1, 1982.

The record under [REDACTED] reflects that the applicant submitted two Forms I-485. The first form was submitted on February 5, 2002, and the second was submitted on June 3, 2003. These two forms contain contradictory information regarding the applicant's initial entry into the United States and his continuous residence in the country. The information on the two Forms I-485 is contrary to information on the Form I-687 (application for status as a temporary resident) dated May 29, 1990. On the Form I-485 filed in 2002, the applicant listed the names, dates of birth and location of birth of his two children. On the Form I-485 filed in 2003, the applicant did not provide any information about his children. On the Form G-325A the applicant filed with the 2002 Form I-485, the applicant indicated his address outside the United States of more than one year as – [REDACTED] from February 1958 (month and year of birth) to August 1984. On the Form G-325A the applicant submitted with the 2003 Form I-485, the applicant indicated his address outside the United States of more than one year as [REDACTED] from February 1958 (month and year of birth) to August 1981. The applicant presented conflicting information about his address in

Bangladesh, which calls into question when the applicant left Bangladesh and when he entered the United States.

The director in her NOID notified the applicant of the conflicting information in the two Forms G-325A. In response, the applicant indicated that he listed his address in Bangladesh in his 2002 Form G-325A from 1958 to 1984 because in his absence, other members of his family lived at that address. The applicant however, did not explain why he listed his address in Bangladesh in the 2003 Form G-325A as from 1958 to 1981.

The contradictory information discussed above regarding the applicant's initial entry into the United States and his continuous residence in the country casts considerable doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. In view of the myriad inconsistencies in the record contained in [REDACTED] and the inconsistencies between information from [REDACTED] and [REDACTED], the applicant has failed to establish that he is eligible for legalization under the LIFE Act.

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. *See 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.*

As noted above, 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 photocopied letters of employment and affidavits from individuals who claim to have known the applicant resided in the United States during the 1980s – is suspect and non substantive. 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 requisite period.

Accordingly, 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.