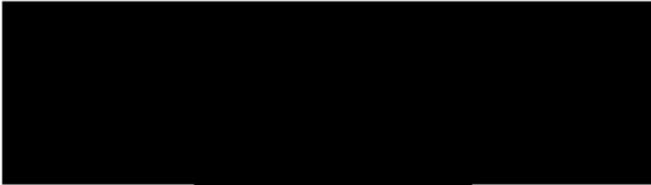


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U.S. Citizenship
and Immigration
Services



L2

FILE: [REDACTED]
MSC 02 110 60085

Offices: GARDEN CITY

Date: **MAR 18 2009**

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 Garden City, New York. 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 consider the additional affidavits the applicant submitted in response to the NOID before making a decision to deny the applicant. In counsel's view, the applicant has submitted sufficient documentation to establish his continuous residence requirement for adjustment of status under the LIFE Act.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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 February 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on January 18, 2002.

In a Notice of Intent to Deny (NOID), dated July 29, 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 applicant was granted 30 days to submit additional evidence.

The applicant responded; however, on September 10, 2007, the director issued a Notice of Decision denying the application on the ground that the applicant had not submitted a response to the NOID with additional evidence to establish his claim.¹

On appeal, counsel asserts that the evidence of record is sufficient to establish that the applicant met the continuous residence requirement for adjustment under the LIFE Act. Counsel submits no additional documentation with the 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 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] in Roslyn, New York, dated December 4, 2001, stating that the applicant was employed as a "busboy" from March 1984 to April 1988.
A letter from [REDACTED] in Astoria, New York, dated December 8, 2001, stating that he has known the applicant since 1981, that the applicant inquired on "a number of occasions for a job"; however, he did not employ the applicant for lack of legalization papers.
A series of notarized letters and affidavits – dated in 1991, 2001 and 2007 – from individuals who claim to have known the applicant resided in the United States 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 document in this decision.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

¹ The record reflects that the applicant submitted a response to the NOID on August 27, 2007, with two additional affidavits; however, the director did not evaluate the additional affidavits before issuing a Notice of Decision denying the application. The AAO will evaluate the additional affidavits in its decision.

The letter of employment from [REDACTED] does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the author did not provide the applicant's address during the periods of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letter was not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. In view of these substantive deficiencies, the letter of employment 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 notarized letters and affidavits in the record – dated 1990, 2001 and 2007– from individuals who claim to have known the applicant since the 1980s, they have minimalist or fill-in-the-blank formats with few details about the applicant's life in the United States, such as where he worked, and the nature and extent of his interaction with the authors over the years. Nor are the letters and affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationships with the applicant in the United States during the 1980s. The notarized letter from [REDACTED] dated December 5, 2001, only stated that he accompanied the applicant to the legalization office in New York in June 1987 to file his application for legalization, and did not provide any information about the applicant's residence in the United States during the 1980s. In addition, the notarized letter from [REDACTED] stated that he has known the applicant since 1981, because the applicant inquired about employment with his company – [REDACTED] – but did not provide any information about the applicant's residence in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the letters and 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.

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.