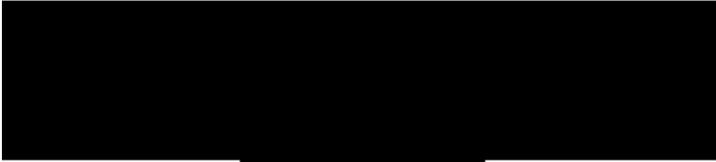


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Citizenship
and Immigration
Services



FILE:



Offices: GARDEN CITY

Date:

MAR 18 2009

[consolidated herein]

MSC 02 352 60308

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:

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 the applicant asserts that the director failed to properly evaluate the documentation submitted in support his application. The applicant asserts that the documentation in the record is sufficient to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status from before January 1, 1982 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).

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 applicant, a native of Bangladesh who claims to have lived in the United States since October 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 17, 2002.

In a Notice of Intent to Deny (NOID) dated August 14, 2007, the director indicated that the evidence of record was insufficient to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status through May 4, 1988. The director noted substantive deficiencies and contradictions in the applicant's testimony at his LIFE legalization interview on August 2, 2004 and documentation in the file with regard to the date the applicant first entered the United States and his years of continuous residence in the country. The applicant was granted 30 days to submit explanations for the discrepancies or submit rebuttal information.

In response, the applicant provided some explanations for the evidentiary discrepancies cited in the NOID and submitted some additional documentation. On December 10, 2007, the director issued a Notice of Decision denying the application, indicating that the rebuttal information and additional evidence failed to overcome the grounds for denial.

The applicant filed a timely appeal, asserting that the director failed to properly evaluate the documentation submitted in support of his application. The applicant asserts that the documentation in the record is sufficient to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status from before January 1, 1982 through May 4, 1988.

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 that the applicant submits 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 series of letters and affidavits from individuals who claim to have employed, resided with or otherwise known the applicant 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 affidavit and letter in this decision.

The AAO notes that although the applicant claims that he entered in the United States before January 1, 1982, and resided continuously in the country through the period required for legalization under the LIFE Act, other documentation in the record indicates otherwise. For example, the record reflects a copy of a Form I-213 in the file. This form indicates that the applicant entered the United States with his wife and child on December 14, 1992, through New York, and proceeded to Canada where they applied for refugee status. On March 12, 1996, the applicant and his family were returned to the United States by the Canadian authority after a failed refugee claim in Canada. The applicant was placed in removal proceeding in the United States. During the removal proceeding, the applicant filed a Form I-589(application for asylum). On the Form I-589, the applicant indicated that he entered the United States on December 14, 1992, by using another person's passport. In the statement accompanying the Form I-589, the applicant stated that he left his country in December 1992, because he was persecuted by his government on account of his political opinion. The applicant indicated that he resided in Bangladesh during the 1980s through 1992, that he opened a company in Bangladesh in 1983, that in 1986, he joined an opposition party [REDACTED] in Bangladesh, and served as the organizing secretary of the party for the [REDACTED] area from 1986 to 1992. The applicant stated that he was arrested on December 8, 1990 and detained until January 15, 1991. The applicant further stated that he was threatened and attacked by opposition party members in November 1991, and that he fled his country on December 14, 1992 to save his life, traveling to Canada through the United States. The above statements clearly show that the applicant was in Bangladesh during the same period he claims to have been continuously resident and physically present in the United States. On the Form I-687(application for status as a temporary resident) dated October 25, 1991, in the file, the applicant indicated that he last entered the United States on August 28, 1987, and that he was absent from the United States once in the 1980s – from September 1981 to November 1981. The applicant did not indicate any other absences from the United States during the 1980s. The contradiction between the information on the Forms I-213, I-589, and I-687, regarding the applicant's initial entry into the United States and his continuous residence in the country casts considerable doubt on his claim that he meets the residence requirement for legalization under the LIFE Act.

Also in the record is a copy of a Form G-325A (Biographic Information) dated September 12, 2002. On this form the applicant listed his last address outside the United States of more than one year as – [REDACTED] Dhaka, Bangladesh, from July 1950(month and year of birth) to August 1991. This residential information is contrary to that stated by the applicant on the Form I-687. On the Form I-687, the applicant listed his address during the

1980s as – [REDACTED] Flushing, New York, from January 1982 to the present (October 1991). The inconsistencies in the record regarding the applicant's initial entry into the United States (1981 or 1992), and his continuous residence in the country during the 1980s, casts considerable doubt on the veracity of his claim that he entered the United States in 1981 and resided continuously in the country 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.*

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.

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 and contradictions in the record. Therefore, the reliability of the remaining evidence – consisting of a series of letters and affidavits – from individuals who claim to have employed, resided with or otherwise known the applicant 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 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. 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.