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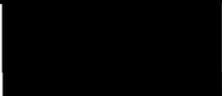
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services



L2

FILE:



Office: NEW YORK CITY

Date:

MAR 19 2009

[consolidated herein]

MSC 02 044 62313

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.

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 failed to properly evaluate the information and documentation submitted in support of his application. In the applicant's view, 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 April 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on November 13, 2001.

In the amended Notice of Intent to Deny (NOID) dated August 29, 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 substantial contradictions between the applicant's testimony at his LIFE legalization interview on March 3, 2004 and information on a Form I-700 previously filed by the applicant with regard to the date the applicant first entered the United States and his years of continuous residence in the country. The director also noted that the affidavits are substantively deficient. The applicant was granted 30 days to submit additional evidence.

In response, the applicant provided some explanations for the evidentiary discrepancies cited in the NOID and submitted some additional documentation. The applicant claimed that the discrepancies cited in the NOID between the applicant's testimony and information on a Form I-700 regarding his initial date of entry into the United States is based on error by the preparer. On September 10, 2007, the director issued an 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.

The applicant filed a timely appeal, asserting that the director did not properly evaluate the evidence in the record. Specifically, the applicant asserts that the director did not give due weight to the explanation provided by the applicant that the discrepancies between his testimony and information on the Form I-700 was due to human error and ignorance. No new evidence is submitted on appeal.¹

The AAO, will not base its determination on information contained in the Form I-700, submitted by the applicant on September 28, 1987, as well as statements or documents submitted in support of the I-700, and information revealed by the adjudication of the I-700. As discussed below, the AAO has made a *de novo* review of the evidence of record as it pertains to the requisite continuous residence, and bases its decision solely on that record without reference to the I-700

¹ The record reflects two Forms I-290B submitted by the applicant on September 21, 2007 and by counsel on December 3, 2007. The record also reflects that the director in New York City rejected the December 3, 2007 appeal as untimely. Since the applicant submitted a Form I-290B on September 21, 2007, the AAO will adjudicate the appeal as timely.

application or information pertaining to that application. The AAO hereby withdraws all reference(s) to the I-700 application in the director's decision.

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 an unlawful status through May 4, 1988, consists of the following:

- A letter of employment from [REDACTED] proprietor of [REDACTED] General Contractor in Brooklyn, New York, stating that the applicant was employed as a painter from 1980 to 1987 and was paid \$5.00 per hour at the beginning, which was later increased to \$6.50 per hour.
- A letter from [REDACTED], president of [REDACTED] General Contractors Inc., in Brooklyn, New York, dated October 7, 1991, stating that the applicant was employed as an "assistant" from 1988 to 1989.

A series of affidavits 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. Here, the submitted evidence is neither probative, nor credible.

The record reflects that while the applicant claims that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988, other documentation in the record shows other wise. For example, the record contains two copies of Crewman's Landing Permits. The first landing permit indicates that the arrived in the United States by ship – [REDACTED] on April 4, 1980, and was required to depart from the United States on the next ship and not authorized to stay for more than 29 days. The second landing permit indicates that the applicant arrived in the United States on a ship – [REDACTED] on April 20, 1984, and was required to depart the United States on the next ship and not authorized to stay for more than 29 days. The two documents suggest that while the applicant may have arrived in the United States on April 4, 1980, he subsequently left the United States

and returned on April 20, 1984 on a different ship, thereby calling into question the veracity of the applicant's claim that he entered the United States in April 1980 and resided continuously in the country since then.

On the Form I-485 the applicant filed in November 2001, he indicated that he last entered the United States on April 20, 1984. On the Form I-687 (application for status as a temporary resident) dated October 5, 1981, the applicant indicated that he last entered the United States on August 15, 1987. In answer to question #35 on the Form I-687, the applicant indicated that he traveled to Bangladesh in July 1987 and returned to the United States in August 1987. This return date corresponds to the date listed by the applicant in question #16 of the form. The applicant did not list any other absences from the United States during the 1980s. The contradictory information provided by the applicant regarding his last entry into the United States and his absences from the United States during the 1980s, as well as the two Crewmen's Landing Permit in the file casts considerable doubt on the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country 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. *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.*

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 the letters did not indicate 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 the records are available for review. Nor were the letters supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during periods indicated. Thus, the employment letters have little probative value. They are not persuasive evidence that the applicant resided in the United States before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The affidavits by individuals who claim to have resided with or otherwise known the applicant during the 1980s have minimalist formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provide remarkably little information about his life in the United States and their interactions with him over the years. Nor are the affidavits accompanied by documentary – such as photographs, letters, and the like – of the affiants' personal relationship with the applicant in the United States during the 1980s. In view of these substantive deficiencies, 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.

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.