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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

L2



FILE:



MSC 02 052 62249

Office: GARDEN CITY

Date:

MAR 31 2009

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.

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 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 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.

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.

On appeal the applicant asserts that he satisfies the continuous residence requirements for LIFE legalization, and submits some additional affidavits and notarized letters.

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 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 December 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on November 21, 2001. At that time the record included the following evidence of the applicant's residence in the United States during the years 1981-1988:

- A notarized letter from [REDACTED] dated March 2, 1991, stating that the applicant had resided with him at [REDACTED] in Brooklyn, New York, from December 31, 1981 to December 31, 1989.
- A notarized letter from [REDACTED], who identified himself as the president of [REDACTED] in Brooklyn, New York, dated March 2, 1991, stating that he employed the applicant as a construction painter from January 1, 1987 to December 31, 1989.
- A ticket receipt from Biman Bangladesh Airlines, dated January 2, 1988, which appears to be in the applicant's name for air travel to Dhaka in January 1988 and a return trip to New York.

On August 1, 2007, the director issued a Notice of Intent to Deny (NOID). The director indicated that the evidence submitted by the applicant was insufficient to establish his continuous residence in the United States during the requisite period for LIFE legalization. The director granted the applicant 30 days to submit additional evidence.

When the applicant failed to respond, the director denied the application on September 21, 2007 for the reasons stated in the NOID.

The applicant filed a timely appeal, reiterating his claim to have entered the United States without inspection by jumping ship on December 25, 1981, and to have resided in continuous unlawful status in the United States throughout the period required for LIFE legalization. The applicant asserts that he also mailed a timely response to the NOID on August 27, 2007. As

evidence thereof he submitted a photocopied cover letter dated August 21, 2007, purporting to be in response to the NOID, and photocopies of a series of affidavits and notarized letters, all dated in August 2007, which allegedly accompanied the cover letter. They include the following:

- Another affidavit by [REDACTED] restating that the applicant resided with him at [REDACTED] in Brooklyn from December 31, 1981 to December 31, 1989.
- Another affidavit by [REDACTED] restating that the applicant worked for his construction company in Brooklyn, New York, as a construction painter from January 1, 1987 to December 31, 1989.
- A notarized letter from [REDACTED] a resident of New York City, stating that he has known the applicant since 1981.

An affidavit by [REDACTED] a resident of Brooklyn, stating that he knows the applicant came to the United States on December 25, 1981 as a crewman.

- An affidavit by [REDACTED] a resident of Brooklyn, stating that he met the applicant at a community meeting in Brooklyn in February 1986 and has remained in touch since then.
- An affidavit by [REDACTED] a resident of Brooklyn, stating that he met the applicant at a grocery store in Brooklyn in June 1983 and has remained in touch since then.
- An affidavit by [REDACTED] a resident of Brooklyn, stating that he met the applicant at a grocery store in Brooklyn on January 15, 1982 and has remained in touch since then.
- An affidavit by [REDACTED], a resident of Brooklyn, stating that he met the applicant on a New York subway in December 1981.
- A notarized letter from [REDACTED] a resident of Brooklyn, stating that he has known the applicant since December 1981.

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 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 only contemporary documentation in the record indicating that the applicant may have been present in the United States during the 1980s is the airline ticket receipt dated January 2, 1988. For someone claiming to have lived in the country since December 1981, it is noteworthy that the applicant cannot produce any other documentary evidence from then through May 4, 1988 – the requisite period of continuous residence in the United States for an alien seeking legalization under the LIFE Act.

The affidavits by ██████ in 1991 and 2007, stating that the applicant was employed at his construction company during the years 1987-1989, 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. Nor has the applicant furnished any pay statements, tax records, or related evidence to support his claim of employment. Thus, the employment affidavits by ██████ have little probative value as evidence that the applicant resided in the United States during the years 1987 and 1988. They have no probative value at all as evidence of the applicant's residence in the United States before 1987.

As for the other affidavits and notarized letters in the record from individuals who claim to have lived with or otherwise known the applicant in New York during the 1980s – they all have minimalist or fill-in-the-blank formats with little personal input from the affiants. Considering how long the affiants claim to have known the applicant, it is remarkable how few details they provide about the applicant's life in the United States and their interaction with him over the years. No photographs, letters, or other materials have been submitted to document the applicant's relationship with any of the affiants during the 1980s. Nor are the affidavits and notarized letters supplemented by any documentation from the affiants confirming their own presence in the United States during the 1980s. Thus, the affidavits and notarized letters have little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish that he 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.