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[REDACTED]

FILE:

[REDACTED]

Offices: NEW YORK CITY

Date:

**MAY 22 2009**

MSC 01 313 60004

[REDACTED]

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 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 he has submitted sufficient documentation to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through the requisite period 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 September 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 9, 2001.

In a Notice of Intent to Deny (NOID), dated February 18, 2004, 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 United States in an unlawful status from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant responded timely, and on June 10, 2004, the director issued a Notice of Decision denying the application 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 reasserts his claim that he has submitted sufficient documentation to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through the requisite period for legalization under the LIFE Act.

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 through May 4, 1988, consists of the following:

A letter of employment from [REDACTED], manager at Robe Films Production in Brooklyn, New York, dated February 18, 1991, stating that the applicant was employed from December 1981 to August 1986, as a counter person and was paid \$3.50 per hour.

A letter of employment from [REDACTED] who signed the letter on behalf of the manager at Royal Bengal Restaurant in Brooklyn, New York, dated July 31, 1990, stating that the applicant was employed from October 1986 to July 1990, as a kitchen helper and was paid \$4.00 per hour.

- A series of affidavits – dated in 1991, 1999, 2004 and 2006 – from individuals who claim to have rented an apartment to, or otherwise known the applicant in the United States during the 1980s.
- A photocopied United States Postal Service registered mail receipt dated February 16, 1988, bearing the applicant's name as the sender with an address located at [REDACTED] Brooklyn, New York.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Here the documents are not probative or credible.

The employment letters from Robe Films Production and Royal Bengal Restaurant, both located in Brooklyn, New York, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the authors 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 letters were 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 addition, the record reflects that a search of New York State Department of Corporation failed to reveal the existence of Royal Bengal Restaurant as a business registered in New York State. Thus, the letters of

employment have limited probative value. They are 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.

The affidavits in the record – dated in 1991, 1999, 2004 and 2006 – from individuals who claim to have rented an apartment to, or otherwise have known the applicant during the 1980s, have minimalist formats with little personal input by the authors. The affiants provided relatively little information about the applicant's life in the United States, such as where he worked, and their interactions with him over the years. Nor are the affidavits accompanied by documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. In addition, the affidavit from [REDACTED] who claimed to have rented an apartment to the applicant from October 1981 to May 1988, does not appear to be genuine. The record reflects that a search of public records revealed the existence of [REDACTED] Ozone Park, Queens, New York (applicant's alleged residence from October 1981 through May 1988); however, [REDACTED] is not the registered owner. Therefore the affidavit of verification of residence from [REDACTED] is not credible evidence of the applicant's continuous residence in the United States from before January 1, 1982 and 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. The affidavit from [REDACTED] is not accompanied by any evidence to establish that [REDACTED] in fact owned the property he allegedly rented to the applicant. 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.* Thus, the affidavits have limited 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.

As for the photocopied United States Postal Service (USPS) registered mail receipt dated February 16, 1988, bearing the applicant's name as the sender with an address located at [REDACTED], Brooklyn, New York, it does not appear to be genuine. The applicant did not indicate the [REDACTED], Brooklyn address as any of his addresses during 1988 or at any other time during the 1980s. According to the information on a Form I-687 (application for status as a temporary resident) the applicant filed in April 1991, the applicant indicated his address as [REDACTED] Queens, New York, from October 1981 to May 1988. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* Thus, the photocopied USPS registered mail receipt has little probative value as evidence of the applicant's residence in the United States during the year 1988; much less in prior years back to before January 1, 1982.

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, 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.