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



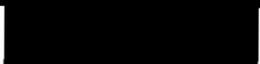
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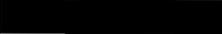


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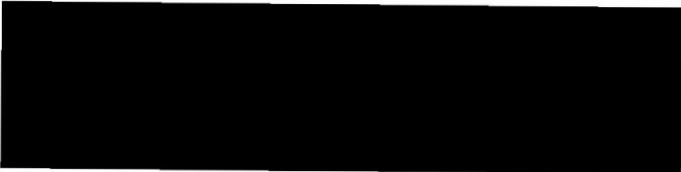
Applicant:



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).

IN 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted substantial documentation to establish he entered the United States prior to January 1, 1982 and continuously resided since that date through May 4, 1988. Counsel states that the director failed to properly weigh all of the documentation submitted to establish the applicant's entry and subsequent continuous unlawful residence. Counsel argues that the director failed to uphold and weigh the immigration judge's decision finding the applicant had entered the United States on August 15, 1981, as required by the doctrine of collateral estoppel. Counsel argues that the director did not address the documents submitted with the LIFE application, but focused exclusively on the allegations of the applicant's own contradicting testimony.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 amenability to verification. 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided:

- A Florida driver license issued on August 20, 1985, and a Certificate of Title from the state of Florida issued on October 4, 1985.
- Car insurance identification cards issued on January 30, 1986 and June 24, 1986, car insurance policies for the periods August 28, 1985 to September 28, 1985, January 30, 1986 to February 28, 1986, June 26, 1986 to June 26, 1987 and June 26, 1987 to June 26, 1988, and a car insurance billing statement dated September 9, 1985.
- A document dated February 2, 1988, from the Florida Power and Light Company and envelopes postmarked and addressed to the applicant in 1986, 1987 and 1988.
- An undated letter from [REDACTED] who attested to the applicant's employment from October 1987 to May 1992 at Oxley's Restaurant and a 1988 wage and tax statement from Oxley's Restaurant.
- A letter dated April 1, 1994, and an affidavit dated April 17, 2002, from [REDACTED] who attested to the applicant's employment at Boca Lago Country Club, Inc. since 1987.
- Earnings statement for the periods ending September 18, 1987, and January 14 and 21, 1988, and a 1988 wage and tax statement from Boca Lago Country Club, Inc.
- An earnings statement for the period ending March 30, 1986 from Del-Aire Golf Club, a receipt dated October 19, 1987, and a bank statement from First Union dated December 31, 1987.
- An affidavit from [REDACTED], who indicated that she has known the applicant since March 1982. The affiant indicated that the applicant would wash and wax her car every two weeks until 1985. The affiant indicated that she met the applicant again in 1987 when she started working at Boca Lago Country Club.
- A letter dated August 1, 1994, from [REDACTED] in Boca Raton, Florida, who indicated that the applicant was a tenant from February 1988 to March 1989.
- A letter dated February 25, 1987, from Tenneco Oil regarding the applicant's termination of employment on February 2, 1987.

- Affidavits from [REDACTED] who indicated that he has known the applicant since October 1981 and that the applicant was in his employ cleaning and waxing cars on and off since 1981. The affiant also indicated that the applicant “subleased by apartment in Peppertree at Boca West Country Club in 1981.”
- Affidavits from [REDACTED] who indicated that he has known the applicant since December 1981, and that the applicant has been in his employ on and off for the past 20 years at his company, Fox Chase, Inc.
- An affidavit from [REDACTED] who indicated that he first met the applicant in May 1982, at a birthday party where the applicant was residing in Pompano Beach at, [REDACTED]. In May 1983, the affiant indicated that the applicant resided with him at [REDACTED] Boca Raton for six months and returned to [REDACTED]. The affiant attested to the applicant’s departure in July 1985 for a month to Bangladesh and to his residence in East Boca until 1988.
- An affidavit from [REDACTED] who indicated that he has known the applicant since 1983 when the applicant resided with his uncle. The affiant indicated that he occasionally socialized with the applicant.

On May 12, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the documents submitted only served to establish his entry and residence in the United States commencing in 1985.

Counsel, in response, asserted that the applicant has submitted probative and relevant evidence to satisfy his burden of proof that he has been residing and physically present in the United States since 1981. Counsel also asserted that under the doctrine of collateral estoppel, the immigration judge’s decision of January 10, 1995, which held that the applicant entered the United States in 1981, must be upheld and followed in the instant case. Counsel submitted photocopies of a postcard with an indecipherable postmark addressed to the applicant in Pompano Beach, Florida; and Walt Disney World tickets.

The director, in denying the application on August 20, 2007, determined that the documentation submitted was insufficient to establish the applicant’s continuous residence in the United States since before January 1, 1982 through May 4, 1988. The director also denied the application because under a separate proceeding, the applicant filed a Form G-325A, Biographic Information, with a Form I-485 application on May 30, 2000, and he indicated on the Form G-325A to have resided in his native country, Bangladesh, until August 1985.

The record reflects that the applicant has a prior immigration file, [REDACTED] which contains the following documentation pertinent to the applicant’s claim of continuous residence in the United States during the requisite period:

- Pages eight and nine of the applicant’s passport, indicating he was issued a nonimmigrant visitor visa in Dhaka, Bangladesh on July 11, 1985. The applicant lawfully entered the United States on August 6, 1985.

- An affidavit notarized October 9, 1986, from his first wife, who indicated that she and the applicant were married in Dhaka, Bangladesh on January 27, 1983, and that due to unfortunate circumstances, she was divorcing the applicant.¹
- A marriage certificate indicating the applicant was married to his second wife on February 26, 1987, in Delray Beach, Florida.²
- On October 19, 1987, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant by his second wife and a Form I-485, Application for Permanent Residence, was filed by the applicant.
- A letter dated February 11, 1988, from [REDACTED] of food and beverage of Boca Lago Country Club, Inc., in Boca Raton, Florida, who indicated that the applicant has been employed at the club for the past two years.
- A document dated February 23, 1988, from [REDACTED], who indicated that the applicant had taken a chest x-ray and blood tests on February 15, 1988.
- Affidavits notarized in 1990 from two affiants indicating that they have been acquainted with the applicant for over three years.
- The order of the immigration judge dated January 10, 1995, in the applicant's deportation proceeding indicated that the applicant first entered the United States on August 15, 1981 and had a child born in the United States in 1987.³
- A Florida automobile insurance identification card issued on August 28, 1985, and a 1988 wage and tax statement from Tenneco Retail Service Company.

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).

On appeal, counsel argues that the information contained on the Form G-325A was not addressed by the director in the Notice of Intent to Deny. On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of a Notice of Intent to Deny. See 72 Fed. Reg. 19100 (April 17, 2007). The rule became effective June 18, 2007, after the filing and adjudication of this application.

¹ Documentation from the family court in Dhaka, Bangladesh indicates that the divorce was final on July 28, 1987.

² On February 25, 1988, the applicant's status was adjusted to that of a permanent residence on a conditional basis. A final judgment dissolving the marriage between the applicant and his second wife was entered into court on October 29, 1990. On February 28, 1993, the applicant's status was terminated.

³ The record contains a copy of the birth certificate of the applicant's son, which reflects he was born on August 16, 1986 in Florida.

The AAO will not dispute the immigration judge's finding that the applicant had entered the United States on August 15, 1981, as the applicant has claimed throughout the application process that he had entered on that date as a nonimmigrant visitor. However, the evidence presented by the applicant does not support a finding that he continuously remained in the United States through August 5, 1985.

USCIS has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he/she is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

While an application should not be denied solely because the applicant has only submitted affidavits to establish continuous residence in the United States for the duration of the requisite period, the submission of affidavits alone will not always be sufficient to support the applicant's claim. The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). Casting doubt to the applicant's claim that he resided in the United States continuously during the entire requisite period is the fact that:

1. The applicant's first spouse, in an affidavit, indicated that she was married to the applicant on January 28, 1983 in Dhaka, Bangladesh. The applicant did not claim an absence during this period on his Form I-687 application, the Affidavit for Determination of Class Membership, or the Form I-256A, Application for Suspension of Deportation. The applicant's failure to disclose this departure is a strong indication that the applicant was outside the United States beyond the period of time allowed by regulation.
2. At item 8 on the Form I-256A, the alien is requested to list all periods of employment during his residence in the United States. The applicant listed employment commencing in 1985. The applicant did not list employment with [REDACTED] or [REDACTED]
3. Item 33 on the Form I-687 application requests the applicant to list all residences in the United States since his initial entry. The applicant did not claim any residence in Peppertree at Boca West County Club in 1981 as attested to in the affidavit of [REDACTED] or in May 1983 at [REDACTED] for six months as attested to in the affidavit of [REDACTED]
4. The Form I-687 application asks the applicant to list his marital status, his children and whether he had any other record with the Service. The applicant indicated that he was never married, did not have any children or any other record with the Service.
5. On his Application for Tax Exemption for 1991, the applicant indicated that he became a permanent resident of Florida in 1985.
6. On his Form G-325A submitted with the Form I-485 application in 1987, the applicant indicated that he resided in his native country, Bangladesh, until 1985.

As the applicant has presented contradictory and inconsistent documents, which undermines his credibility, counsel's assertion that the information contained in the prior applications is unconnected with the instant Form I-485 is specious.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the numerous credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.