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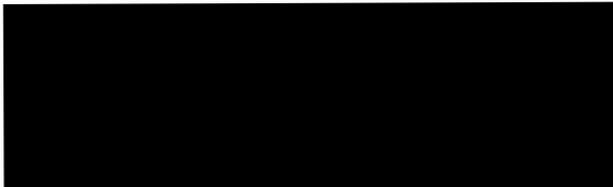
IN RE: Applicant:



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 counsel asserts that the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement 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 June 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 20, 2002. It is noted that the applicant was around 11 years old in 1981, at the time he claims to have entered the United States.

In a Notice of Intent to Deny (NOID), dated May 24, 2005, 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 an unlawful status through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The record reflects that the applicant did not submit a response to the NOID, and on March 9, 2006, the director issued a Notice of Decision denying the application based on the grounds stated in the NOID.

On appeal counsel asserts that the director did not properly evaluate the evidence of record. In counsel’s view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement 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 documentation that the applicant submitted in support of his claim to have entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status during the requisite period for LIFE legalization, some of which were submitted with the Form I-687 (application for status as a temporary resident) the applicant filed in 2006, consists of the following:

- Two affidavits from [REDACTED] dated March 16 and May 6, 2006 stating that the applicant is his nephew, to the best of his knowledge that the applicant entered the United States on June 10, 1981, that the applicant had visited him and his family in the United States on numerous occasions, and that he had occasionally provided some financial help to the applicant.

A series of affidavits from individuals who claim to have known the applicant resided in the United States during the 1980s.

Three photocopied merchandise receipts dated August 13, 1983, August 12 1986 and August 18, 1986, have handwritten notations and no stamps or other official markings to authenticate the dates they were written.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The record reflects that the applicant, who was born on December 18, 1969, and who claims that he has been residing in the United States since June 1981, was around 11 years old when he allegedly entered the country. However, the applicant does not submit any school or medical records nor does he provide an explanation as to why he is unable to provide his school or medical records. In addition, the applicant does not provide any supporting documentation to establish that he entered the United States in June 1981, does not provide any documentation as to how he was able to sustain himself or make contributions towards rent or household expenses at such a young age. In 1981 the applicant was 11 years old, and therefore, would have had to have been provided for and cared for by an adult. At his interview, the applicant claims that he traveled to the United States with his uncle. In support of that claim, the applicant submitted two letters purportedly from his uncle, [REDACTED] Mr. [REDACTED] however, does not state how the applicant entered the United States, does not state that the applicant traveled with him to the United States and does not state that he was responsible for the applicant's care and wellbeing in the United States. Mr. [REDACTED] vaguely stated that "to the best of my knowledge, [the applicant] first entered the U.S. on June 10, 1981 without inspection and resided continuously and unlawfully until May 4, 1988," and that he occasionally provided some financial help to the applicant. Mr. [REDACTED] does not indicate the basis of his knowledge of

the applicant's entry and continuous residence in the United States. Thus, the letter from Mr. [REDACTED] has little probative value. It is not persuasive evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988.

The affidavits in the record from individuals who claim to have known the applicant in the United States during the 1980s have minimalist formats with very little input by the affiants. Although the affiants claim to have known the applicant during the 1980s, only one attests to have known the applicant before January 1, 1982. The affiants provided very few details about the applicant's life in the United States such as where he resided or worked and the nature and extent of their interactions with the applicant over the years. The affidavits are not accompanied by any documentation – such as *photographs, letters or the like* – of the affiants' personal relationships with the applicant in the United States during the 1980s. Furthermore, none of the affiants have personal knowledge that the applicant entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. For all the reasons stated above, the affidavits have little probative value. They are not persuasive evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988.

The photocopied merchandise receipts dated August 13, 1983, August 18, 1986 and August 21, 1986, have handwritten notations with no date stamp or other authenticating mark to verify the dates they were written. The originals are not in the file for proper verification. The receipt from Vitha Jewelers (N.Y) Inc. dated August 13, 1983, identified the applicant's address as [REDACTED] the receipt from [REDACTED] dated August 21, 1986, identified the applicant's address as [REDACTED] New York; and the receipt from Photosonic did not bear an address for the applicant. The addresses identified on the receipts conflict with the information provided by the applicant on the Form I-687 he filed in January 2006. On that form, the applicant identified his address as [REDACTED] from June 1981 to June 1987. Thus, the receipts do not appear to be genuine.

The contradictions noted above and the applicant's inability to resolve them undermines the credibility of the receipts as evidence of the applicant continuous residence in the country as well as the veracity of his 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. *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, receipts have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the analysis of the evidence in the record, 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.