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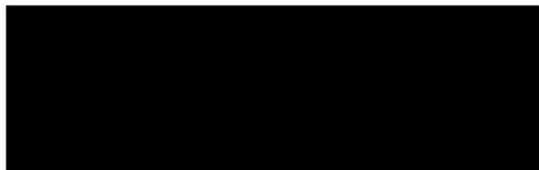
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
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FILE:

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Office: LOS ANGELES

Date: JUN 26 2006

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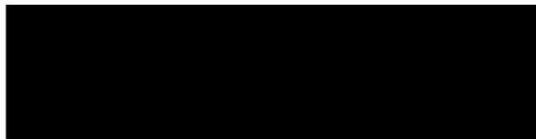
Applicant:



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).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The district 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, the applicant asserts that the director's decision was issued in error as he submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988 in response to the Notice of Intent to Deny. The applicant provides copies of previously submitted documents in support of the appeal and a brief.

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(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 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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- An affidavit notarized March 23, 1990 from [REDACTED] of Los Angeles, California, who indicated attested to the applicant's residences in the United States since July 1981. Mr. Johnson asserted that he was a co-worker of the applicant at JJ&T Limousine.
- A letter dated January 10, 2002 from [REDACTED] a doctor of internal and family medicine in Montebello, California, who indicated that the applicant has been a patient since 1985.
- An affidavit notarized January 12, 2002 from [REDACTED] of Los Angeles, California, who indicated that he shared apartments with the applicant at [REDACTED] Los Angeles from July 1985 to August 1987, and at [REDACTED] Montebello from August 1987 to March 1990.
- An affidavit notarized January 10, 2002 from [REDACTED] of Buena Park, California, who indicated he has known the applicant since 1985 and attested to the applicant's Los Angeles residence at [REDACTED] during that time.
- Affidavits notarized December 17, 2001 from [REDACTED] of Los Angeles, California and [REDACTED] of Diamond Bar, California, who indicated that they has known the applicant since 1981 and attested to the applicant's residence in Los Angeles County since that time.
- An affidavit notarized October 22, 2002 from [REDACTED] of Los Angeles, California, who attested to the applicant's employment at Southland Corp., from August 1986 to March 1990. Ms. Perry asserted that she was a co-worker of the applicant.
- An affidavit from [REDACTED] of Los Angeles, California, who attested to the applicant's employment at JJ&T Limousine from July 1981 to August 1986. [REDACTED] asserted that he was a co-worker of the applicant.
- A Bachelor of Arts degree from Washington State University dated August 12, 1983.

The director issued a Notice of Intent to Deny dated August 5, 2004, advising the applicant that the documents submitted neither established his entry prior to January 1, 1982 nor his continuous unlawful residence since that date through May 4, 1988. In addition, the applicant was informed that there were inconsistencies between his application, documentation, and oral testimony. Specifically, the applicant indicated on his Form for Determination of Class Membership that he first entered the United States on June 5, 1981 with a visa in New York. However, at the time of his LIFE interview, the applicant indicated that he first entered on July 5, 1981 on a speedboat in Florida. The applicant, in response, submitted copies of documents previously submitted with his LIFE application. Counsel asserted in part:

At the very first opportunity the applicant had stated before the officer J. Maalona of the Service that he had not entered from New York under any visa but had entered from Miami, Florida but the officer considered not to proceed with the testimony and referred the applicant for special registration. The applicant accordingly presented himself to the concerned officer for registration on April 9, 2004 who in turn determined that the applicant does not require registration.

At the interview held on July 16, 2004, the applicant again submitted the additional documents which he had offered on March 26, 2004. The applicant was asked only to submit the copies

thereof which he had accordingly submitted to the officer. Again at the said interview, the applicant had stated that he had entered the United States on July 5, 1981 without inspection via Miami Border and that the preparer who was preparing the forms had mistakenly inserted information that did not pertain to him in answer to questions of the said forms. Since the applicant is not presently aware of the identity of the preparer and since he himself had signed the form, he regrets for the same.

Counsel stated that the applicant's response to questions 16 through 18 on his Form I-687 application which asked for the applicant's manner of entry, last entry date into the United States and place of entry, "are not worthy which in fact states that the applicant had entered through Miami, Florida on July 5, 1981 without a visa."

Counsel stated that the applicant's response to question 23 on his Form I-687 application which asked for the country that issued his passport, to which the applicant indicated New York is contradictory "since the original passport could only be from Bangladesh, the home country of the applicant."

Regarding the applicant's Form for Determination of Class Membership, counsel asserted that the director listed an incorrect date in his notice as the form reflects that the applicant indicated that first entered the United States on "07/05/1981" and not June 5, 1981. Counsel contended, "this illustrates that unintended mistakes sometimes are creeping in and that no adverse inference should be drawn therefrom." Counsel asserted that the form has to be read as a whole and that the applicant should not be penalized on technical ground. Counsel asserted that the inconsistency, which crept in by the haste and negligence of the preparer, is only apparent and not real.

Counsel's statement has been considered, however, the applicant, in affixing his signature on item 46 of his Form I-687 application, certified that the information he provided was *true* and *correct*. Said application does not indicate that anyone other than the applicant completed the application as no information is listed in items 48 and 50 of the application; items 48 and 50 of the application requests the name, address and signature of the person preparing the form. As conflicting statements have been provided, it is reasonable to expect an explanation from the preparer in order to resolve the discrepancy. However, to date, no statement from the alleged preparer or the preparer's name has been submitted to corroborate counsel's statement. Consequently, counsel's assertion that the application was prepared by someone other than the applicant cannot be considered as persuasive

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).

The AAO does not view the affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982 through May 4, 1988. Mr. [REDACTED] and [REDACTED] claimed to be co-workers of the applicant; however, the applicant provided no evidence from JJ&T Limousine and Southland Corp. to authenticate his employment. Although item 36 of the Form I-687 application requests the applicant to list the full name and address of his employer, the applicant failed to provide an address for either employer. As such, the applicant's alleged employments are not amenable to verification by the Citizenship and Immigration Services. [REDACTED] simply stated that they have known the applicant since 1981, but provided no details as to how and where they met, the nature of their interaction in subsequent years or the applicant's actual address. [REDACTED] claimed that the applicant

shared apartments with him from July 1985 to March 1990; however, the applicant provided no evidence such as lease agreements, rent receipts or utilities bills to corroborate [REDACTED]'s claim. [REDACTED] asserted that the applicant had been a patient since 1985; neither appointment notices nor receipts, which would add credibility to the affiant's claim, were provided by the applicant.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation, the virtual absence of contemporaneous documentation, and the insufficiency of the affidavits 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.

Finally, beyond the decision of the director, it must be noted that the applicant indicated on his Form I-687 application that his only departure from the United States was to Mexico for business from February 1988 to March 1988. The applicant also indicated on said application that his spouse was residing in his native country, Bangladesh. The applicant, however, on his LIFE application indicated that he had a child born on December 28, 1988 in Bangladesh. These facts taken together along with the applicant’s failure to disclose his child’s birth on his Form I-687 application are a strong indication that the applicant may have been outside the United States beyond the period of time allowed by regulation. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

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