



U.S. Citizenship
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FILE: MSC 02 229 62635 Office: Seattle

Date: MAY 25 2006

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, Seattle, Washington, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel puts forth several arguments in support of his contention that the applicant had submitted sufficient evidence to the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) to corroborate his claim of continuous residence in this country from January 1, 1982 through May 4, 1988.

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. See § 1104(c)(2)(B) of the LIFE Act and 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 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. See 8 C.F.R. § 245a.12(e).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 petitioner 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 or petitioner 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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the overwhelming majority of submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act) on March 26, 1990. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] in Garden Grove, California from 1981 to 1985 and [REDACTED] in Tustin, California from 1985 to 1985. However, it appears the dates of residence for the address in Tustin, California were listed in error as the applicant subsequently submitted another separate Form I-687 application to the Service on May 16, 2002, in which he listed his dates of residence at [REDACTED] in Tustin, California as 1985 to 1989 at part #33 of this separate Form I-687 application.

In support of his claim of continuous residence in the United States since prior to January 1, 1982 through May 4, 1988, the applicant submitted two employment letters signed by [REDACTED] and [REDACTED] respectively. The testimony in these letters corresponds to information listed by the applicant regarding his employment history during the requisite period at part #36 of both of the Form I-687 applications submitted by the applicant where applicants were asked to list information relating his employment in the United States since entry.

The applicant included an affidavit signed by [REDACTED] who stated that he had knowledge that the applicant traveled from Los Angeles, California to India because of his father's illness in October 1987 and that he subsequently returned to this country one month later by crossing the border from Mexico into this country without inspection at or near San Ysidro, California. However, other than attesting to the applicant's purported absence from this country in 1987, Mr. [REDACTED] failed to provide any details or specific verifiable information relating to the applicant's residence in this country since prior to January 1, 1982 to May 4, 1988.

The applicant provided an original residential lease containing his signature and that of [REDACTED] for a month-to-month lease of a room at the [REDACTED] address in Garden Grove, California beginning January 1, 1981. The applicant submitted twenty-four original Rediform rent receipts that are signed by [REDACTED] and contain the following receipt numbers and corresponding months: 7195 for January 1981, 7071 for March 1981, 6839 for November 1981, 7058 for March 1982, 6887 for November 1982, 7196 for February 1983, 7072 for March 1983, 6886 for April 1983, 7059 for November 1983, 6840 for February 1984, 6906 for April 1984, 6917 for May 1984, 6980 for July 1984, 6919 for January 1985, 6959 for March 1985, 6978 for May 1985, 6908 for January 1986, 6952 for March 1986, 6916 for May 1986, 6872 for August 1986, 7003 for February 1987, 7170 for

April 1987, 7119 for June 1987, and 7168 for August 1987. However, these receipts do not follow a logical and sequential progression in number and date. For instance, receipt number [REDACTED] is for January 1981 while receipt number 7196 is for February 1983, receipt number [REDACTED] is for November 1981 while receipt number [REDACTED] is for February 1984, and receipt number [REDACTED] is for May 1984 while receipt number [REDACTED] is for May 1986. The fact that these rent receipts are not numbered and dated in a logical and sequential manner raises questions regarding their origin and seriously diminishes the credibility of such receipts.

The applicant provided an original residential lease signed by he and [REDACTED] for a month-to-month lease of a room at the Carfax address in Tustin, California beginning January 1, 1988. While the applicant included nine original [REDACTED] rent receipts that are signed by [REDACTED] only four of these receipts shall be discussed as these four receipts contain dates occurring during the requisite period. These four receipts contain the following receipt numbers and corresponding months: 6984 for January 1988, 7164 for February 1988, 7199 for April 1988, and 6983 for May 1988. However, these receipts do not follow a logical and sequential progression in number and date as receipt number 6984 is for January 1988 while receipt number [REDACTED] is for May 1988. Again, the fact that these rent receipts are not numbered and dated in a logical and sequential manner raises questions regarding their origin and seriously diminishes the credibility of such receipts.

It must be noted that [REDACTED] and [REDACTED] do not appear to be the same individual as the signature and handwriting of [REDACTED] are visibly and significantly different when compared to the signature and handwriting of [REDACTED] contained in the leases and receipts discussed above. While the receipts were signed by two different individuals over a period of seven years and five months, the twenty-four receipts signed by [REDACTED] range in number from [REDACTED] to [REDACTED] and the four receipts signed by [REDACTED] range in number from [REDACTED] to [REDACTED]. The fact that twenty-nine rent receipts issued to the applicant by two different individuals for two separate and distinct addresses of residence in a period exceeding seven years are within such close and overlapping proximity and range brings into question their origin and further impairs the credibility of these documents.

In addition, as noted above, the applicant testified that he lived at [REDACTED] in Garden Grove, California from 1981 to 1985 and began living at [REDACTED] in Tustin, California in 1985 at part #33 of both of the Form I-687 applications contained in the record. The applicant submitted a residential lease signed by [REDACTED] and dated January 1, 1981 to corroborate his claim of residence at the [REDACTED] address in Garden Grove, California from 1981 to 1985. However, the applicant's testimony that he resided at this address until 1985 is seriously compromised as he provided eight original Rediform rent receipts signed by [REDACTED] and dated January 1986, March 1986, May 1986, August 1986, February 1987, April 1987, June 1987, and August 1987. The applicant failed to put forth an explanation for the discrepancy between his own testimony and evidence submitted in support of his claim of residence for the requisite period.

The applicant submitted photocopies of Form 1040A Federal Individual Tax Return and Form 540A California Resident Personal Income Tax Return for tax years 1982, 1983, 1984, 1985, 1986, and 1987. The applicant listed his home address as [REDACTED] in Fontana, California on these tax returns. The applicant's listing of this address as his home address on these tax returns directly contradicted his testimony that he resided at "[REDACTED]" in Garden Grove, California from 1981 to 1985 and began living at [REDACTED] in Tustin, California in 1985 at part #33 of both of the Form I-687 applications contained in the record. The applicant failed to offer any resolution for the contradiction in his testimony.

Subsequently, on May 17, 2002, the applicant submitted his Form I-485 LIFE Act application. The applicant included three new affidavits in support of the applicant's claim of residence in the United States from prior to January 1, 1982 to May 4, 1988.

The applicant submitted an affidavit signed by [REDACTED] who indicated that he had personal knowledge that the applicant resided in Garden Grove, California since 1981 when they became acquainted through a common friend at the Sikh Temple in Fremont, California. Although Mr. [REDACTED] testified that the applicant lived in Garden Grove, California since 1981, he failed to provide any specific verifiable information such as his address of residence in Garden Grove, California or any other location the applicant claimed to have lived in this country through May 4, 1988.

The applicant included an affidavit signed by [REDACTED] who provided the applicant's current address and indicated that he had knowledge that the applicant resided in the United States since their first meeting in 1981. However, Mr. [REDACTED] failed to provide any direct and specific testimony relating to the applicant's residence in this country for the requisite period.

The applicant provided an affidavit signed by [REDACTED] who testified that she is the applicant's mother and she had personal knowledge that he resided in the United States since 1981 when he began regular correspondence with her in December 1981 and continued to send such correspondence while residing in this country. However, the probative value of the testimony contained in the affidavit signed by [REDACTED] is limited in that Ms. [REDACTED] has acknowledged that she is the applicant's mother, a direct family member who must be viewed as having an interest in the outcome of proceedings, rather than an independent and disinterested third party. Further, Ms. [REDACTED] failed to provide any specific verifiable information such as the applicant's address(es) of residence in the United States for that period he claimed to have lived in this country from prior to January 1, 1982 through May 4, 1988. While [REDACTED] testified that the applicant corresponded regularly with [REDACTED] since he began residing in this country in 1981, she failed to include any evidence, such as his letters or the postmarked envelopes in which such letters had been mailed, to corroborate this testimony.

On January 30, 2003, the district director issued a notice of intent to deny to the applicant informing him of CIS' intent to deny his LIFE Act application because of the fact that he had failed to submit sufficient credible evidence of continuous unlawful residence in the United States for the period in

question. The applicant was granted thirty days to respond to the notice and provide additional evidence in support of his claim of residence in the requisite period.

In response, the applicant submitted an affidavit signed by Mr. [REDACTED] stated that he known the applicant since 1981 when the applicant worked for two days removing bushes from his property. Mr. [REDACTED] declared that he and the applicant became reacquainted in 1989 and that they had maintained contact since. However, Mr. [REDACTED] failed to provide any direct and specific testimony relating to the applicant's residence in this country for the requisite period.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on December 3, 2003.

On appeal, counsel asserts that the applicant had submitted sufficient evidence to support and corroborate his claim of continuous residence in this country for the requisite period. Counsel declares that rent receipts and tax returns submitted in support of the applicant's claim of residence had not been fabricated as the district director concluded in denying the I-485 LIFE Act application. However, counsel fails to advance any reasonable explanation as to why the applicant would list an address of residence on the tax forms for the 1982, 1983, 1984, 1985, 1986, and 1987 tax years that he did not list as an address of residence for the same period on both Form I-687 applications contained in the record. Further, counsel fails to address the fact that these rent receipts do not follow a logical and sequential progression in number and date or that twenty-nine rent receipts issued to the applicant by two different individuals for two separate and distinct addresses of residence over a period in excess of seven years are within such close and overlapping proximity and range. Moreover, counsel failed to provide any explanation as to how the applicant could have been issued rent receipts signed by [REDACTED] and dated January 1986, March 1986, May 1986, August 1986, February 1987, April 1987, June 1987, and August 1987, when the applicant had moved in 1985 from the [REDACTED] address in Garden Grove, California where Mr. [REDACTED] was purportedly his landlord.

Counsel contends that the district director erred in determining that the affidavit submitted by the applicant's mother was not credible because she was a family member. However, it is the probative value and not the credibility of the affidavit that is at issue as the applicant's mother is a close family member with an interest in the outcome of proceedings and not an independent and disinterested third party. Counsel states that the applicant submitted affidavits from witnesses that could testify that he was in this country during the requisite period. However, counsel fails to provide any explanation as to why the remaining affidavits submitted by the applicant lack specific verifiable testimony relating to his claim of residence in the United States. Affidavits lacking such direct and specific testimony cannot be considered to be probative to the applicant's claim of residence in this country for the requisite period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the

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 absence of sufficiently detailed supporting documentation, the existence of conflicting testimony that conflicts with critical elements of the applicant's claim of residence and the applicant's own contradictory testimony all seriously undermine the credibility of his claim of residence in this country for the requisite period, as well as the credibility of the evidence submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal probative value and his own contradictory testimony, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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