



U.S. Citizenship  
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Services

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PUBLIC COPY

FILE:

MSC 02 206 60875

Office: Chicago

Date: APR 05 2007

IN RE:

Applicant:

PETITION: 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, Chicago, Illinois, 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, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel contends that the applicant has submitted sufficient evidence to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988. Counsel asserts that Citizenship and Immigration Services, or CIS (formerly the Immigration and Naturalization Service, or the Service) failed to acknowledge receipt of the applicant's response to the notice of intent to deny. Counsel submits documentation in support of the applicant's appeal.

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 section 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 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 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.

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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 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 December 2, 1989. At part #32 of the Form I-687 application where applicants were asked to provide information relating to his immediate family, the applicant listed a daughter, [REDACTED] and two sons, [REDACTED] and [REDACTED], and indicated that all three children had been born in India on unknown dates. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed an absence from this country from March 1987 to June 1987 when he traveled to India for "business."

In support of his claim of residence in the United States since prior to January 1, 1982, the applicant included his own affidavit in which he claimed that he first entered the United States illegally via New York on March 12, 1981. The applicant stated that he subsequently lived in this country until March 13, 1982 when he traveled to India and that he remained in India until June 21, 1982. The applicant declared that he legally entered this country via New York with a non-immigrant visa on June 21, 1982. The record contains a photocopy of the applicant's Form I-94, Arrival-Departure Record, reflects that the applicant entered this country as a B-2 visitor at New York, New York on June 21, 1982 with a period of authorized stay until December 20, 1982. Although the applicant's entry into the United States with a B-2 visitor's visa on June 21, 1982 appeared to be a lawful entry, he claimed that he was returning to his prior unlawful and unrelinquished residence in this country. Nevertheless, the Form I-94 does not demonstrate that the applicant resided in this country from prior to January 1, 1982 through June 21, 1982 or that he remained in this country past the expiration of the date of his period of authorized stay on December 20, 1982.

Subsequently, on April 24, 2002, the applicant filed his Form I-485 LIFE Act application. At part #3B of the Form I-485 LIFE Act application, were asked to provide information relating to his immediate family, the applicant indicated that his two sons, [REDACTED] and [REDACTED] Ahmed, had been born in the United States on November 11, 1985 and October 1, 1987 respectively. However, the applicant failed to provide any evidence, such as birth certificates, to demonstrate that his two sons had been born in this country during the requisite period. In addition, the applicant's testimony that his two sons had been born in the United States on the Form I-485 LIFE Act application directly contradicted his prior testimony that his sons had been born in India on the Form I-687 application. The fact that the applicant provided contradictory testimony must be considered to be detrimental to his credibility. Furthermore, the applicant failed to provide any additional evidence in support of his claim of residence in the United States from prior to January 1, 1982.

The district director subsequently issued a notice to the applicant on January 12, 2004, informing him of CIS' intent to deny his Form I-485 LIFE Act application. The district director noted that the applicant had failed to submit sufficient evidence to corroborate his claim of continuous residence in this country from prior to January 1, 1982 to May 4, 1988, rather that the evidence he had provided demonstrated that he lawfully entered this country on June 21, 1982. The applicant was granted thirty days to respond to the notice.

The district director concluded that the applicant failed to respond to the notice of intent to deny and, therefore, denied the Form I-485 LIFE Act application on March 25, 2004.

On appeal, counsel asserts that CIS failed to acknowledge receipt of the applicant's response to the notice of intent to deny. Counsel includes copies of this response with the appeal and such material shall be incorporated into his appeal.

Counsel contends that the testimonial and documentary evidence provided by the applicant are sufficient to establish his unlawful residence in the United States for the period in question. However, the applicant submitted only his own affidavit to support his claim of residence in this country and failed to provide any independent evidence that would tend to corroborate such claim. While the applicant submitted a photocopy of a Form I-94 documenting his entry into the United States on June 21, 1982, such entry must be considered as lawful without independent evidence that he entered and resided in this country in that period from prior to January 1, 1982 through to June 21, 1982 or that he remained in this country past the date of the expiration of his authorized stay on December 20, 1982. Additionally, the applicant has negated his own credibility by providing contradictory testimony relating to events that occurred during the requisite period. Specifically, the applicant initially claimed his two sons were born on unknown dates in India on the Form I-687 application but then subsequently testified on the Form I-485 LIFE Act application that his two sons were born in the United States on November 11, 1985 and October 1, 1987, respectively.

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 any independent verifiable supporting documentation seriously undermines the credibility of the applicant's claim of residence in this country for the period in question. The applicant himself has diminished the credibility of his claim of continuous residence in this country since prior to January 1, 1982 by providing conflicting testimony regarding the dates and places of the birth of his two sons. 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 failure to provide any independent evidence to corroborate his claim of residence and his own contradictory testimony relating to significant events that occurred during the period in question, 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 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

"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.

The applicant testified that he traveled to India for business from March 13, 1982 to June 21, 1982 at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982. Clearly, such an absence, consisting of one hundred days, exceeds the forty-five day limit allowed for a single absence from this country in the period between January 1, 1982 and May 4, 1988. The applicant has claimed that he traveled to India for business and failed to assert that he experienced any exigent circumstances that delayed his purported return to the United States. Therefore, any purported delay the applicant may have experienced in accomplishing the purposes of this trip cannot be considered to be due to an emergent reason within the meaning of 8 C.F.R. § 245a.15(c)(1). Even if the applicant had overcome that basis of the district director's denial relating to his failure to establish continuous unlawful residence in the United States during the requisite period, this admitted absence would have interrupted any period of continuous unlawful residence in this country that may have been established prior to the date that such absence began.

Given the fact that the applicant has acknowledged exceeding the forty-five day limit allowed for a single absence from this country in the period from January 1, 1982 to May 4, 1988, he has failed to establish having resided in continuous unlawful status in the United States for such period 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.