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U.S. Citizenship
and Immigration
Services

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AUG 02 2007

FILE:



MSC 02 241 62495

Office: LOS ANGELES

Date:

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. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 is in error as the director failed to consider the evidence submitted in response to the Notice of Intent to Deny. The applicant asserts he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant provides copies of previously submitted documents in support of the 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. 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 affidavits from affiants attesting to his residence during the requisite period including letters attesting to his school

attendance at The Islamic Center of South Pay-LA and [REDACTED] during the requisite period.

In a Notice of Intent to Deny issued on October 20, 2004, the applicant was advised that the affidavits and statements submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record

The AAO does not view the documents from the affiants discussed above as substantive enough to support a finding that the applicant continuously resided in the United States during the requisite period as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. The applicant claimed that he was approximately 10 years of age when he came to the United States with his parents, and attended an Islamic Center Community School from 1981 to 1990. However, no contemporaneous evidence such as inoculation records or school transcripts was provided to support his claim. The letter from the [REDACTED] at [REDACTED] is insufficient as the [REDACTED] did not indicate whether he had consulted school records to verify the applicant's school attendance during the requisite period. Furthermore, the letter contains typographic errors; "socioial" for social and "religious" for religious, and the Imam indicated that he was only a volunteer instructor during this time-frame.
2. On his Form I-687 application, the applicant indicated that in August 1987, he reentered the United States with a non-immigrant visa via air in New York. However, his father indicated in his affidavit that he and the applicant crossed the United States-Mexico border at Tijuana in 1987.
3. The applicant claimed to have resided with his parents and [REDACTED], "a friend of his father, at [REDACTED], Paramount, California from 1981 to August 1987. The affidavits from the father and [REDACTED] however, do not corroborate the applicant's claim.
4. The applicant claimed, on his Form I-687 application to have departed the United States on July 21, 1987 and reentered August 14, 1987. However, there is a period of approximately two weeks that is unaccounted for as the applicant did not claim any residence on his Form I-687 application since departing the United States until September 1987. The significant omission of an address is a strong indication that the applicant was either not in the United States during the requisite period or may have been outside the United States beyond the period of time allowed by regulation.
5. On his Form I-687 application, the applicant claimed that he was employed in domestic help from January 1981 to December 1985, and was self-employed since January 1986. However, at the time of his initial interview on August 18, 2004, the applicant under oath, in a sworn statement, indicated that he did not commence working until 1990.

These factors tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

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 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, 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.