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U.S. Citizenship
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Services

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FILE:

Office: NEW YORK

Date:

AUG 02 2007

MSC 01 360 62759

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.

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, New York, New York, and is now before the Administrative Appeals Office 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. The director also denied the application, finding that the applicant's absence in 1987 was not considered brief, and he had failed to establish continuous physical presence from November 6, 1986 through May 4, 1988.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel argues that the director ignored "four separate affidavits as well as a letter from the applicant's house of worship." Counsel states that the applicant's absence was a temporary one-time event caused by family bereavement, and fits the definition of brief, casual and innocent.

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:

- An affidavit from [REDACTED] of Long Island City, New York, who attested to the applicant's residence since 1981. The affiant based his knowledge on the applicant attending the same meetings.
- An affidavit from [REDACTED] of Brooklyn, New York, who attested to the applicant's residence in the United States since 1981. The affiant based his knowledge on having been a co-worker of the applicant.
- An affidavit from [REDACTED] who attested to the applicant's absence from the United States from July 27, 1987 to September 4, 1987.
- A statement from the applicant claiming that during the requisite period he was self-employed and received his wages in cash.

On November 1, 1996, the legacy Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS) issued a notice to the applicant informing him of adverse information that had been obtained relating to his claim to class membership. Specifically, the applicant was informed that the preparer of his Form I-687 application, [REDACTED], had been convicted of violations of 18 U.S.C. § 2, Aiding and Abetting, 18 U.S.C. § 371, Conspiracy, and 18 U.S.C. § 1001, False Statements, in the United States District Court for Las Vegas, Nevada on May 8, 1995. The applicant was also informed that the notary, [REDACTED] who notarized the above affidavits and statement had been convicted of a violation of 18 U.S.C. § 371, Conspiracy, on December 9, 1993. The record contains evidence demonstrating that these convictions were the result of Operation Desert Deception, a large-scale fraud investigation centered in Las Vegas, Nevada, Phoenix, Arizona, and Los Angeles, California.¹ The operation targeted providers of fraudulent applications and documentation in the legalization and special agricultural worker programs, as well as class membership applications and documentation in the legalization class-action lawsuits; *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (*Zambrano*).

The applicant was granted thirty days to respond to the notice. The notice, however, was returned by the post office as undeliverable.

Along with his LIFE application, in an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- A letter dated January 17, 2004, from [REDACTED], Imam of the Ahlubayt Mosque in Brooklyn, New York, who indicated that the mosque has known the applicant since 1982 and the applicant has attended various religious services and lectures.
- A notarized affidavit from [REDACTED] of Freehold, New Jersey, who indicated that he has known the applicant since 1982. The affiant based his knowledge on meeting the applicant at

¹ The record reflects that the attorney, [REDACTED], representing the applicant in conjunction with the submission of his Form I-687 application had been convicted of a violation of 18 U.S.C. § 371, Conspiracy, on June 8, 1995.

social gatherings and in religious centers in their community. The affiant also attested to the applicant's employment at his friend's pizza store on "Grand" Street in Manhattan.

- A notarized affidavit from [REDACTED] of Elmont, New York, who indicated that he has known the applicant since 1981. The affiant asserted the applicant sought religious counseling from him when the applicant first arrived in the United States. The affiant asserted that the applicant has attended his lectures at various locations and has attended religious services at Al-Khoei Islamic Center in Jamaica, Queens where he frequently preaches.
- A notarized affidavit from [REDACTED] of Brooklyn, New York, who indicated that he has known the applicant since 1981 and attested to the applicant's residence in his apartment building since 1990.
- A notarized affidavit from [REDACTED] of Brooklyn, New York, who attested to the applicant's New York residence from 1981 to 1989 at [REDACTED], Brooklyn. The affiant asserted that he was a co-worker of the applicant at a pizza store on "Grand" Street in Manhattan for three years and prayed with the applicant at Greenpoint Muslim Center.
- A letter dated January 11, 1990, signed by an individual who claimed to be the president of All City Construction Co. in Brooklyn, New York. The individual attested to the applicant's employment as a construction worker from 1987 to 1988.
- A statement of absences from the United States, which listed the purpose for the applicant's departure from the United States on July 27, 1987, as mother's death and marriage.² The applicant reentered on September 4, 1987.

According to the interviewing officer's notes, at the time of the applicant's LIFE interview, the applicant indicated that he worked in construction for three years, but did not recall the contractor's name. The applicant indicated that he was subsequently employed at Granite Street Pizza on Granite Street in Manhattan for approximately three to four years until 1989. The applicant indicated that he departed the United States to Canada on July 27, 1987, spent two days in Canada and departed to Pakistan to visit his ailing mother, who subsequently passed away. The applicant indicated he reentered the United States on September 4, 1987.

In a Notice of Intent to Deny dated May 28, 2004, the applicant was once again advised of the fraudulent affidavits from [REDACTED] and [REDACTED]. The applicant was advised that the letter from All City Construction Co., contained an illegible signature and, therefore, CIS had no way of verifying who signed the document. The applicant was advised that the letter from All City Construction Co, contradicted his sworn testimony as it attested to his employment from 1987 to 1988; however, the applicant indicated that he was employed at Granite Street Pizza for "three to four years until 1989." As such, the applicant's employment at All City Construction Co. would have occurred prior to 1987. Regarding his absence from the United States, the applicant was advised of the following:

You first testified that you went to Canada. When asked the reason for the departure, you said that it was for your mother's funeral. You were then asked why she was being buried in Canada, and you said that she was buried in Pakistan, and then changed your story to say that you went to Canada at first, but then went to Pakistan.

The director indicated that the applicant did not satisfy the statutory requirement, prescribed in section 245A(a)(3)(A) of the Immigration and Nationality Act, of "continuous physical presence in the United

² The applicant indicated on his Form G-25A, Biographic Form that his marriage occurred on August 1, 1987 in Pakistan.

States” between November 6, 1986 and May 4, 1988 as no unforeseen emergent reason was provided for his extended absence. The director also indicted that the applicant’s absence of 39 days was not considered “brief” and that the applicant had failed to submit evidence of his mother’s death.

“Continuous residence” is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

The regulation set forth in 8 C.F.R. § 245a.16(b) for continuous physical presence has been amended and the previous reference to a “thirty (30) day limit” on absences has been removed. The current, amended regulation reads as follows:

For purposes of this section, 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. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, 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.

It is not necessary for the applicant to provide an *emergent reason* for physical presence as the regulation at 8 C.F.R. § 245a.16(b) does not require it. *If* the applicant’s absence had exceeded 45 days, his absence would be examined utilizing the standard set forth in 8 C.F.R. § 245a.15(c)(1), and evidence of his mother’s death would be required to make a determination whether his prolonged absence from the United States was due to an emergent reason. Accordingly, the director’s finding in this matter will be withdrawn.

Counsel, in response, to the Notice of Intent to Deny, asserted, in part:

You also commented extensively on a job letter from All City Construction. You incorrectly referred to it as an affidavit when in fact it was not. Your questions during the interview never dealt with the possibility of the applicant working two jobs at the same time this is a common practice among immigrants holding low wage jobs. You also discussed some affidavits previously submitted in 1990 that you claim were fraudulent in a Notice of Intent to Revoke dated November 1, 1996. The inability of the INS to contact the affiants who issued their letters in 1990 would not logically lead to the conclusion that the affidavits were false. The affiants changing their addresses would explain why the Service was not able to corroborate the affidavits.

As previously noted by the director, in her Notice of Decision, while is possible for an individual to have worked two jobs simultaneously, in the instant case, the applicant made no claim on his Form I-687

application, at the time of his LIFE interview, or in response to the Notice of Intent to Deny to have worked “two jobs at the same time.”

The director also noted in her decision because the applicant’s relied only on affidavits, which some were proven fraudulent, it was more imperative that the remaining affidavits be verified. The director cited 8 C.F.R. § 245a.2(d), which states, in part “applications submitted with unverifiable documentation may be denied.”

Counsel, on appeal, reiterates his arguments previously submitted in response to the Notice of Intent to Deny. Counsel asserts, “[t]he affiants changing their addresses would explain why the Service was not able to corroborate the affidavits.” Counsel, however, does not provide a current address for any of the affiants in order for CIS to verify the authenticity of the documents submitted with the LIFE application.

Except [REDACTED] all the remaining affiants claimed to have known the applicant since 1981 or 1982, but provided no address for the applicant during the period in question. The letter from [REDACTED] raises questions to its authenticity as the applicant indicated on his Form I-687 application that he was *not* affiliated with any religious organization during the requisite period. The letter from All City Construction Co. also raises questions to its authenticity as the applicant did not claim this employment on his Form I-687 application.

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).

Given the credibility issues arising from the documentation 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.

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