



U.S. Citizenship
and Immigration
Services

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FILE: MSC 01 333 60374

Office: Atlanta

Date: AUG 15 2007

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:



PHOTIC COPY

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, Atlanta, Georgia, 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 did not establish that (1) he had entered the United States in an unlawful status from before January 1, 1982, (2) he had continuous residence in an unlawful status in the United States before January 1, 1982 to May 4, 1988, and (3) he maintained continuous physical presence in the United States from November 6, 1986 to May 4, 1988.

On appeal, the applicant contends that he has submitted sufficient evidence to substantiate his claim that he meets the above criteria. The applicant attached copies of his passport, affidavits and declarations previously submitted in connection with his application.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 or 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).

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 unlawful residence in the United States through May 4, 1988. Here, the submitted evidence is not relevant, probative and credible.

The record contains the following documents relevant to the application:

- A sworn affidavit by the applicant that he entered the United States on December 17, 1980 and his only absence was June 24, 1987 through July 15, 1987.
- A copy of the applicant's passport with entry stamps to the Bahamas on December 15, 1980 and July 13, 1987.
- A sworn affidavit and a notarized letter by [REDACTED] who stated that applicant lived with him since the applicant's arrival on December 17, 1980 through August 30, 1981. [REDACTED] stated that the applicant moved to Frankfort, Kentucky in August 1981 to work for the affiant's friend, [REDACTED]
- A declaration by [REDACTED] wife of [REDACTED], who stated that the applicant had resided in the United States since 1980. [REDACTED] stated that the applicant entered the United States through Florida from the Bahamas. She further noted that the applicant lived with her until August 1981 when he moved to Frankfort, KY, and that the applicant lived at [REDACTED] house for nine years.
- An April 6, 1991 letter by [REDACTED] who stated that the applicant had worked at his residence as a housekeeper from August 1981 through September 1990 with a short absence of about one month when the applicant went to Bangladesh to see his ailing wife. [REDACTED] stated that the applicant resided at his residence for the entire duration of the applicant's services.
- A September 3, 1991 sworn affidavit by [REDACTED] who stated that the applicant came to her residence on June 23, 1987 from Frankfort, Kentucky. The applicant was on his way to Bangladesh to see his ailing wife. [REDACTED] took him to JFK Airport in her car on June 24, 1987.

- An August 14, 1991 letter from [REDACTED], district sales manager of Biman Bangladesh Airline, who stated that the applicant traveled from Dhaka to London on July 12, 1987 on his way to Nassau, Bahamas. [REDACTED] further stated that the applicant was scheduled to fly to Bahamas by British Airways.
- A declaration by [REDACTED], the applicant's son-in-law, who stated that the applicant left for the United States in December 1980. [REDACTED] stated that the applicant returned in June 1987 to see his wife and returned to the United States in July 1987. [REDACTED] stated that the applicant narrated how he previously entered the United States. The applicant told [REDACTED] that he traveled to the United States via London and the Bahamas, and entered the United States through the Miami border in Florida. The applicant told [REDACTED] that he would take the same route on his return journey to the United States a few days later.
- A declaration by [REDACTED] who stated that the applicant was in the United States since December 1980. [REDACTED] stated that the applicant returned to Bangladesh in June 1987 and flew back to the United States in July 1987. [REDACTED] noted that the applicant narrated his journey to the United States. The applicant stated that he traveled to Nassau, Bahamas via London before reaching Miami Beach in Florida by boat.
- Four similar affidavits of witness by [REDACTED] and [REDACTED] that the applicant resided at the following residences during the statutory period:
 - Dec 1980 to August 1981: Manhattan, NY
 - Aug 1981 to June 1987: Frankfort, KY
 - June 1987 to July 1987: Gaibandha, Bangladesh
 - July 1987 to Sept 1990: Frankfort, KY

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 on December 20, 1990. In connection with the Form I-687, the applicant stated that he entered the United States on December 17, 1981 without a visa through the Florida border via the Bahamas. As noted above, the applicant submitted a copy of his passport with an entry stamp to the Bahamas on December 15, 1980. The affidavits of Mr. [REDACTED] and [REDACTED] support the applicant's claim; however, they are merely recounting what the applicant himself narrated to them. Other than relying on the applicant's own narration, the affiants have no first-hand knowledge of the applicant's entry into the United States prior to January 1, 1982.

The applicant also submitted affidavits by [REDACTED] and [REDACTED]. Both affiants stated that the applicant lived with them since his arrival in 1980 through August 1981. The affiants provided no supporting documentation of their identity or presence in the United States during the statutory period. Furthermore, the affiants did not provide any supporting documentation or specific verifiable information to corroborate the applicant's claim of residence prior to January 1, 1982.

The applicant submitted an April 6, 1991 letter by [REDACTED] who stated that the applicant had been working at his residence as a housekeeper from August 1981 through September 1990. Dr. [REDACTED] and his wife, [REDACTED] submitted sworn affidavits of witness stating that the applicant resided with them during the same time period, except for a brief absence of one month. Dr. [REDACTED] specifically stated that the applicant resided at his residence for the entire duration of the applicant's services. Although not required, the affiants provided no supporting documentation of their identity or presence in the United States during the statutory period. Moreover, the affiants provided no contemporaneous evidence or other relevant documentation to corroborate the applicant's claim that the applicant allegedly resided with them for nine years.

The applicant also submitted an affidavit of witness by [REDACTED] who stated that the applicant resided in the United States from December 1980 to September 1990 with a brief absence in 1987. The affiant provided no supporting documentation of the affiant's identity or presence in the United States during the statutory period, nor did she provide supporting documentation or contemporaneous evidence to corroborate the applicant's residence in the United States during the statutory period.

It is noted that the applicant submitted copies of a July 24, 2002 letter from the [REDACTED] Public Library in Frankfort, Kentucky and a copy of a July 17, 2002 email from Greyhound Bus Services, Louisville, Kentucky. The applicant indicated that he attempted to obtain records verifying a library card from 1982 to 1990 and a bus ticket purchased in 1987, respectively. In both instances, neither the Paul Sawyer Public Library nor Greyhound Bus Services could confirm the information requested by the applicant as the records were disposed of years ago. The fact that the applicant requested the above information neither confirms nor negates his presence in the United States.

The applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1980 through 1988 period. None of the affidavits included any supporting documentation of the affiant's identity or presence in the United States during the statutory period. The absence of sufficiently detailed affidavits and supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

Doubt cast on any aspect of the applicant's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the application or visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the evidence catalogued above leads the AAO to conclude that the applicant's claimed residency is not credible. Thus, the record does not contain any contemporaneous evidence, or other sufficient credible evidence, to establish that the applicant resided in the United States prior to January 1, 1982.

Given the above, the issue of whether the applicant he maintained continuous physical presence in the United States from November 6, 1986 to May 4, 1988 is moot.

The applicant has failed to establish that he maintained continuous unlawful residence in the United States during the requisite period for two reasons. First, his evidence is insufficient to establish continuous unlawful residence. Second, the credibility of the applicant and affiants has not been established.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.