



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 012 60129

Office: NEW YORK

Date: AUG 28 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:

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, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. This decision was based, in part, on the director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel asserts that the director's denial of the application focused on only two aspects of the application and ignored the "overwhelming weight of the evidence." Counsel further asserts that the director's characterization of these two aspects was erroneous. Counsel submits an additional document 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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). "Continuous unlawful 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.]

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 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 Citizenship and Immigration Services (CIS) 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provide that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; identify the location of such company records and state whether such records are accessible or, in the alternative, state the reason why such records are unavailable.

According to his form to determine class membership, which he signed under penalty of perjury on May 17, 1993, the applicant stated that he first arrived in the United States in May 1981. The applicant also stated that he left the United States for Canada on September 10, 1987 to "visit and beteer [sic] prospects" and returned on January 2, 1988. The applicant also admitted to this absence on his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on May 17, 1993.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A copy of a May 24, 1993 sworn statement from [REDACTED] in which he stated that he resided at [REDACTED] stated that the applicant resided in his apartment from May 1981 to August 1987. [REDACTED] did not indicate whether his apartment on Stanton Street was the apartment that he shared with the applicant. Further, the applicant submitted no evidence to corroborate that he or [REDACTED] resided at the stated address during the period indicated.
2. An August 17, 2001 sworn statement from [REDACTED] which he stated that the applicant visited him in New York in May 1981.
3. A copy of an April 13, 1993 affidavit from [REDACTED], in which he stated that the applicant resided in the United States from May 1981 to the date of the affidavit.
4. A copy of a July 30, 2001 statement from [REDACTED] in which he stated that he met the applicant in June 1981, when the applicant came to his restaurant seeking employment.
5. A copy of a May 2, 1993 letter from the Food Market in New York, signed by [REDACTED] in which he stated that the applicant worked for the store from June 1981 to April 1987, and from January 1988 to December 1992. [REDACTED] did not indicate his position with the company or provide all of the information required by 8 C.F.R. § 245a.2(d)(3)(i), including the applicant's address at the time of his employment or whether the information was taken from company records. The applicant submitted no evidence such as pay stubs, pay vouchers, or similar documentary evidence to corroborate his employment with the Food Market.

6. A copy of a June 7, 1993 sworn statement from [REDACTED] in which he stated that the applicant had resided in his apartment since September 1987. [REDACTED] listed his address as [REDACTED]. The applicant submitted no documentary evidence to corroborate that he or [REDACTED] lived at the stated address during the period indicated.

The director noted in her decision that documentation submitted by the applicant from the Islamic Council did not provide evidence of his continuous residence in the United States during the qualifying period as it indicated that he established membership in 1993. On appeal, counsel states that, although the applicant's formal membership with the Council dated from 1993, the evidence establishes that the applicant "prayed at the Council's facilities and associated with its members in the United States for years before that time." Nonetheless, no evidence in the record establishes the date the applicant formed his association with the Islamic Council or that the association was formed at any time within the qualifying period.

The applicant has submitted minimum documentation and no contemporaneous evidence to establish that he resided continuously in the United States during the qualifying period. The evidence submitted by the applicant does not demonstrate that the applicant's claim that he resided in the United States from prior to January 1, 1982 to May 4, 1988 is "probably true." Accordingly, the applicant has failed to establish continuous residence in the United States for the required period.

The director noted in her Notice of Intent to Deny (NOID) dated April 30, 2004 that the applicant stated during his interview that he traveled outside the United States from September 10, 1987 to January 2, 1988. In his letter accompanying the applicant's response to the NOID, counsel denied that the applicant testified during his interview that he remained outside of the United States for over three months. Counsel asserts that the applicant instead testified that he made two trips to Canada, one during the "last week in September 1987 until the middle of October 1987. The second trip was from the last week in December until the first week in January 1988." In response to the NOID, the applicant submitted a copy of a sworn declaration from [REDACTED] in which he stated that the applicant visited him in Canada "two times during September 1987 to first week of January 1988." [REDACTED] further explained:

I met [the applicant] at Montreal in the last week of September 1987. He returned to the USA by the middle of October 1997 [sic]. Second time he came to Montreal by last week of December and returned back to the USA in the first week of January 1988.

These statements are inconsistent with the applicant's statements on his form to determine class membership and his Form I-687 application that he traveled to Canada on September 10, 1987 and returned on January 2, 1988. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant submitted no independent objective evidence to resolve this inconsistency in the record.

The applicant admitted under penalty of perjury on two occasions that he was in Canada from September 10, 1987 to January 2, 1988, a period of 112 days. Accordingly, the applicant's stay in Canada during 1987 and 1988 interrupted his "continuous residence" in the United States. The applicant's 112-day absence exceeded the 45-day period allowable for a single absence. While not dealt with in the director's decision, there must be a further determination as to whether the applicant's prolonged absence was due

to an "emergent reason." The applicant stated the he left the United States to visit and improve his prospects. In the absence of evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason delayed or prevented the applicant's return to the United States beyond the 45-day period.

The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. § 245a.11(b) and 15(c)(1). 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.