



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 235 63211

Office: CHICAGO

Date: MAR 26 2007

IN RE: Applicant: [REDACTED]

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 "Robert P. 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, Chicago, Illinois, 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.

On appeal, counsel asserts that the director erred in his decision and that the applicant submitted evidence in response to the Notice of Intent to Deny (NOID) to establish by a preponderance of the evidence that he is eligible for benefits under the LIFE Act. Counsel provides additional documentation 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).

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).

On a form to determine class membership that he signed on June 10, 1991 affidavit, the applicant stated that he first arrived in the United States on March 15, 1981 pursuant to a B2, nonimmigrant visitor's visa, which he violated by overstaying. On his Form I-687, Application for Status as a Temporary Resident, which he signed on June 10, 1991, the applicant stated that he also entered the United States on May 10, 1984 pursuant to a B2 visa, which he violated by again overstaying.

The applicant stated that he left the United States once during the qualifying period, from April 15 to May 25, 1984. The applicant also stated on his Form I-687 application that from March 1981 to May 1987, he lived at [REDACTED] in Brooklyn, New York, and from June 1987 to March 1991 at [REDACTED] in Brooklyn. The applicant identified [REDACTED] as his only employer during the requisite period.

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 February 10, 1990 statement from the Shaju Deli & Grocery signed by [REDACTED] for the owner, [REDACTED], who did not identify his position with the company, stated that the applicant had worked as a cashier for the restaurant from August 1981 to December 1989. [REDACTED] did not indicate the source of his information regarding the applicant's employment or the applicant's address at the time of his employment. 8 C.F.R. § 245a.2(d)(3)(i).
2. A copy of an undated letter from the Tandor Restaurant signed by [REDACTED] as manager, and stating that the applicant worked as a waiter at the restaurant from October 15, 1981 to February 1984. The applicant did not identify the Tandor Restaurant as one of his employers during the qualifying period and submitted no documentation to corroborate his employment with the company. The applicant also provided no information to explain his alleged employment with two different companies during the same time frame. 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).
3. A June 24, 1991 affidavit from [REDACTED], in which he stated that the applicant had been his tenant at [REDACTED] in Brooklyn from March 1981 to May 1987. Mr. [REDACTED] also listed his address as [REDACTED], and stated that the applicant paid him \$75 per month for rent. This information appears inconsistent with that of [REDACTED] discussed below.
4. An undated "affidavit" from [REDACTED] in which she stated that the applicant was a "countryman" and that he was her roommate from October 1981 to April 1985. [REDACTED] did not state the residence that she and the applicant shared. This information is inconsistent with that provided by [REDACTED] in another undated affidavit,¹ in which she stated that she was a citizen of the United States, and that the applicant was a friend of her late boyfriend, a Bangladeshi citizen, and that they "were in touch on a day-to-day basis." *Id.*
5. A May 7, 2004 sworn statement from [REDACTED] in which he stated that he treated the applicant at Ravenswood Hospital on October 26, 1981. However, this statement is evidence only of the applicant's presence in the United States on a given date and is not evidence that he resided in the United States for any given period.
6. A January 14, 1991 statement from [REDACTED], imam at the Jamaica Muslim Center, Inc. in Queens, New York, in which he certified that he had personally known the applicant since 1981, and that the applicant was a regular visitor to the center when he lived in

¹ The notary block contains a month and day but no year.

the area. The imam did not state the circumstances surrounding his initial acquaintance with the applicant or how he dated his relationship with the applicant.

7. A copy of an undated affidavit from [REDACTED] in which the affiant stated that the applicant had been living in the United States since October 1981.² The affiant stated that this “knowledge is based on the fact that [the applicant] is a good-natured social worker that likes to volunteer as and when his neighbors and community heed his help.” However, the affiant did not indicate the circumstances surrounding the initial acquaintance with the applicant or how he dated the applicant’s presence and residence in the United States.

The applicant submitted no contemporaneous evidence of his presence and residency in the United States. Given this absence of contemporaneous documentation and the unresolved inconsistencies in the applicant’s affidavits, it is concluded that the applicant has failed to establish continuous residence in the U.S. for the required period.

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

The affidavit from [REDACTED] which indicates that it was executed before the same notary as that of [REDACTED] is also without a year.