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U.S. Citizenship  
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FILE:

MSC 02 095 60885

Office: ATLANTA

Date:

**APR 28 2008**

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, applicant maintains that he has resided in the United States for 25 years. He asserts that he does not possess any additional evidence, only affidavits previously submitted.

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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

In the Notice of Intent to Deny (NOID), dated on February 14, 2005, the director stated that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant only submitted documentation, except for affidavits, after his 1989 entry on a B-1 visa. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that the applicant replied to the NOID, but no additional evidence was received. In the Notice of Decision, dated June 1, 2005, the director denied the instant applicant based on the reasons stated in the NOID. The director also noted that the record reflects that the applicant was admitted into the United States on a B-1 visa on September 26, 1989. The director stated that all of the submitted documentation, other than affidavits, was dated after the applicant's 1989 entry.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In support of the applicant's claim, the record contains a sworn affidavit (date illegible) by [REDACTED] Ms. [REDACTED] stated that the applicant lived with her from January 1981 to November 1986 at [REDACTED]. The affiant stated that all rent receipts and household bills were in her name and the applicant contributed towards payment of the rent and household bills. The affiant provided her address. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to provide any supporting documentation, such as rent receipts or household bills in her name to substantiate her claim.

It is noted that the record contains a Form I-687, Application for Status as a Temporary Resident, completed by the applicant on September 28, 1990. In his Form I-687, the applicant indicated that he resided at [REDACTED] from February 1981 to December 1986. The applicant's statement is inconsistent with the affiant's statement. This discrepancy detracts from the credibility of the affiant.

The record contains three sworn affidavits by [REDACTED], and [REDACTED]. All of the affidavits are virtually identical and are dated on August 4, 1990. All of the affiants stated that they had personal knowledge that the applicant resided in the United States from February 1981

to the present. Specifically, all of the affiants indicated that the applicant resided at [REDACTED] in Manhattan, New York, from February 1981 to December 1986. All of the affiants provided their address of residence. Although not required, none of the affidavits included any supporting documentation of the affiants' presence in the United States during the requisite period.

It is also noted that the applicant filed a Form I-687 under Section 245A of the Immigration and Nationality Act on January 9, 2006. In his 2006 Form I-687, the applicant stated that he resided at [REDACTED], from January 1981 to November 1986. The applicant's statement is inconsistent with the above affiants, as well as his Form I-687 completed in 1990. These discrepancies seriously bring into question the credibility of the applicant's claim.

The record also includes a sworn affidavit by [REDACTED] dated on July 10, 1990. The affiant stated that the applicant lived with her from November 1986 to October 1988 at [REDACTED].

The affiant stated that all rent receipts and household bills were in her name and the applicant contributed towards payment of the rent and household bills. The affiant provided her address. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The affiant failed to provide any supporting documentation, such as rent receipts or household bills to substantiate her claim. It is also noted that the affiant's statement is inconsistent with the applicant's 1990 Form I-687, which indicates that the applicant resided at [REDACTED], from December 1986 to December 1989. This discrepancy casts doubt on the credibility of the affiant.

The record includes a declaration by [REDACTED], Assistant Sales of Air Afrique, dated on October 23, 1990. Ms. [REDACTED] stated that the applicant departed New York on August 7, 1987. She provided her telephone number and business address.

The record also includes a declaration by [REDACTED], Public Information for Masjid Malcom Shabazz, dated on May 17, 1990. Mr. [REDACTED] stated that the applicant has been a member of the Muslim Community and has been in the United States since May 1981. Mr. [REDACTED] failed to state the address where the applicant resided during membership period, establish how the author knows the applicant, and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The lack of detailed information detracts from the credibility of [REDACTED].

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 record contains no independent objective evidence to explain the above inconsistencies.

Although the applicant has submitted several affidavits in support of his application, the applicant has not provided any credible, contemporaneous evidence of residence in the United States during the duration of the requisite period. The affidavits contain numerous discrepancies which raise serious concerns about the veracity of the applicant's assertions. As stated previously, the evidence

must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's identity or presence in the United States during the requisite period. The discrepancies and absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detract from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with inconsistencies and minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Beyond the decision of the director, it is noted that the record reflects the following:

- The New York Police Department arrested the applicant on October 9, 1992, and charged him on 3 counts:

Count 1: Grand Larceny 3 Value Over \$1000;  
Count 2: Criminal Possession Stolen Property Over \$3000; and  
Count 3: Unauthorized Use of Vehicle without Owner's Consent

On June 16, 1993, the applicant pled guilty to section 240.20 of the New York Penal Code, *disorderly conduct*, a violation, in the New York City Criminal Court (Docket No. [REDACTED]). This single violation conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

- On May 22, 1994, the New York Police Department arrested the applicant under the name [REDACTED], and charged him on 2 counts:

Count 1: Trademark Counterfeiting in the third degree  
Count 2: Administration Code

On May 23, 1994, the applicant pled guilty to section 165.71 of the New York Penal Code, *trademark counterfeiting in the third degree*, a class A misdemeanor, in the New York City Criminal Court (Docket No. [REDACTED]). This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

- On May 30, 1994, the New York Police Department arrested the applicant and charged him on 2 counts. On August 22, 2002, the applicant pled guilty to Section 240.20 of the New York Penal Code, *disorderly conduct*, a violation, in the New York City Criminal Court (Docket No. [REDACTED]). This single violation conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

According to the evidence in the record:

- On December 12, 1999, the Atlanta Police Department arrested the applicant and charged him on 2 counts:

Count 1: Cruelty to Children

Count 2: Battery/Simple Battery

The record does not contain any court documents that reflect the final disposition of these charges. In the absence of court records, the AAO will not make a finding that the applicant was convicted on these charges.

Therefore, based on the above discussion, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.