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FILE:



Offices: SEATTLE

Date: AUG 26 2008

consolidated herein]
MSC 07 165 11967

IN RE: Applicant:



APPLICATION:

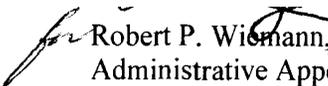
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


Robert P. Wismann,
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director) in Seattle, Washington. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that the evidence submitted is more than sufficient to establish that he has resided in the United States continuously in an unlawful status since 1981.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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).

The applicant, a native of India who claims to have lived in the United States since August 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on December 10, 2001.

On February 15, 2007, the director issued a Notice of Decision, denying the application. The director noted that the applicant had provided contradictory information in his prior applications for asylum and withholding of deportation, (Form I-589), his Application for Status as a Temporary Resident, (Form I-687), Citizenship and Immigration Service record of the applicant's attempted entry into the United States on December 31, 1988 with a counterfeit visa, and the applicant's sworn testimony. The director found that notwithstanding the inconsistencies noted, the evidence submitted by the applicant in support of the instant application, which consisted primarily of one affidavit, and a rental agreement was insufficient to establish the applicant's eligibility for the benefit sought by a preponderance of the evidence. Specifically, the director found that the affiant did not provide any independent evidence of his own presence in the United States and the basis of his knowledge of his attestation. The director also found that the affidavit is contrary to the applicant's sworn and notarized statement of his arrest in India in 1984. The director found that the applicant has failed to establish that he resided in the United States from before January 1, 1982 and continuously resided in an unlawful status through May 4, 1988.

On appeal, the applicant asserts that the evidence submitted is more than sufficient to warrant approval of his application. The applicant also asserts that the director incorrectly discounted the affidavit submitted simply because the affiant failed to submit independent documentation to establish his presence in the United States during the statutory period and reiterated his eligibility for the benefit sought. The applicant did not submit any additional documentation in support of his claim.

On December 31, 1988, the applicant attempted to enter the United States in New York, using a valid Indian passport and a counterfeit US non-immigrant visa. A sworn statement was taken at the airport on December 31, 1988, in which the applicant stated that he applied for a US visa in 1988 and was denied, and that he bought the visa with which he used to travel to the United States. The officials determined that the applicant was inadmissible and upon the applicant's request, detained him and placed him in an exclusion hearing before the Immigration Judge (IJ). At his exclusion hearing, the applicant filed a request for Asylum and Withholding of Deportation on a Form I-589. On the Form I-589, and the accompanying Form G-325A, the applicant stated that he was married to his wife in India on December 9, 1984, that he had two children all born in India in 1985 and 1986, respectively, that he attended Sikh National College from March 1981 to March 1984 and that he has been a member of Sikh Student Federation since 1981.

At the immigration hearing before the IJ on July 24, 1989, the applicant testified under oath that he joined All India Sikh Student Federation in 1981, that he was arrested in India by the central reserve police on July 5, 1984 at his home for political reasons, that he was taken into custody and detained for one month while being tortured by the police, that he was subsequently released and was taken to a hospital for treatment for injuries sustained while in police custody, and that he was hospitalized for three weeks and then released. The applicant further testified that he continued to work with the Sikh Student Federation, that on October 25, 1988, while driving four leaders to a conference, his vehicle was shot at by the police, but he managed to escape and then went to New Delhi on October 31, 1988, that he applied for a US visa in November 1988 and was denied, so he purchased a counterfeit visa and attempted to use it to enter the United States in December 1988.

The above testimony as well as a Form G-325A directly contradicts the applicant's claim that he entered the United States since before 1982 and resided continuously in an unlawful status through May 4, 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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The applicant has not recanted his 1989 testimony and has provided no explanation for his conflicting testimony and how it relates with his current application for legalization under the LIFE Act. The applicant clearly stated in 1989 that he did not enter the United States until December 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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