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U.S. Citizenship
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FILE:



MSC 02 079 60390

Office: NEW YORK

Date: DEC 29 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).

IN 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and is now before the Administrative Appeals Office (AAO) 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 from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the director did not give proper consideration to the evidence submitted by the applicant in support of his application. Counsel asserts that the applicant has met his burden of proof to establish his claim.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 and 8 C.F.R. § 245a.11(b).

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 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 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.

At the time the applicant filed his Form I-687 application on March 26, 1990, he indicated that he was issued a visitor visa on April 2, 1983, and lawfully entered the United States with the visa on April 15, 1983. The applicant submitted a copy of his national identification card, which was issued on November 8, 1989. The applicant presented a letter dated March 19, 1990, from [REDACTED], consular attaché for the Consulate General of Pakistan in New York. The letter contained a **photograph of the applicant and indicated that the applicant had traveled on passport number [REDACTED]**. The applicant presented a letter dated April 2, 1990, purportedly from [REDACTED], indicating that the applicant had traveled on passport number [REDACTED], which was issued in March 1981 in Lahore, Pakistan.

On March 26, 1990, the applicant was issued a Form I-72 requesting that he provide evidence of his arrival as a nonimmigrant visitor in the United States. A notice dated September 30, 1997, indicates the applicant claimed under oath that he was unable to submit evidence to establish his entry with a nonimmigrant visa on April 15, 1983, because he never had or received a visa during the requisite period.

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

- Three metered envelopes allegedly postmarked during the requisite period and addressed to the applicant at [REDACTED] Brooklyn, New York.
- A letter dated March 1, 1990, from [REDACTED] of Prime Stationers, Inc. in Forest Hills, New York, who indicated that the applicant was employed as a laborer from December 1981 to May 1982, and from November 1982 to January 1983.
- An affidavit from [REDACTED] of Brooklyn, New York, who indicated that he has been in a personal and professional relationship with the applicant since 1981. The affiant asserted he and the applicant "used to go together for shopping, pray fun time and many more places." The affiant asserted he lost everyday contact with the applicant once the applicant moved to another location.
- A letter dated November 7, 2004, from [REDACTED], secretary general of Muslim Community Center of Brooklyn, Inc., in Brooklyn, New York, who indicated that the applicant has been participating in Friday prayer service since 1986-1987.
- An affidavit from [REDACTED] of Brooklyn, New York, who indicated that he vividly remembers having met the applicant during Friday prayers in Makki Mosque at Coney Island Avenue. The affiant asserted that he and the applicant would occasionally have their meetings at a friend's home.
- A letter dated July 10, 1990, from [REDACTED], general secretary of Pakistan Society of Brooklyn in Brooklyn, New York, who indicated that the applicant has been a member of its society since January 1987.

On July 12, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the letter from Prime Stationers, Inc., did not include a telephone number and according to the New York Telephone Operator and Directory, the address [REDACTED] did not relate to Prime Stationers, Inc. The director also noted that the authenticity of the letter raises questions as it was tampered and altered. The director further advised the applicant of the following discrepancies:

1. During a telephone conversation with the [REDACTED] Consulate General of Pakistan, he indicated that the letter dated April 2, 1990 was fraudulent. [REDACTED] also indicated that the applicant's national identification card was issued to him in Pakistan on November 8, 1989, and the applicant was present at the time of the issuance of the card.
2. During a telephone conversation with [REDACTED], he stated that he did not have any knowledge of the number of people who come to the Pakistan Society of Brooklyn and that the society came into existence sometime in the 1990's.
3. During a telephone conversation with [REDACTED], he stated that he did not have any knowledge of the number of people who come to the Muslim Community Center of Brooklyn, Inc. and that the community center at [REDACTED] came into existence sometime in the 1990's.
4. The letters from Pakistan Society of Brooklyn and Muslim Community Center of Brooklyn, Inc., had no evidentiary weight as the applicant indicated at item 34 on his Form I-687 application that he was not affiliated with any clubs, organizations or churches.
5. The applicant indicated on his LIFE application that he did not have any children. However, on his Form I-687 application and at the time of his LIFE interview the applicant claimed to have four children; two sons ([REDACTED] and [REDACTED]) born in December 1982, and two sons ([REDACTED] and [REDACTED]) born in December 1984. At the time of his LIFE interview, the applicant also claimed to have a child born in 1992. The applicant indicated that his wife had never visited the United States, Canada or Mexico. The director noted that if the applicant's statements (claimed to have first entered the United States in November 1981, to have only departed once in March 1983, and that his wife had not visited North America) were true, "your spouse could not have physically come in contact with you thereby making it impossible to explain how you managed to have five (5) children born in Pakistan."

The director, in issuing her Notice of Intent to Deny, also drew extensively from the questions and answers that appear to be verbatim transcriptions of the applicant's interview at the time of his LIFE interview. However, neither the interviewing officer's notes nor a signed statement executed by the applicant corroborating the interviewing officer's questions, which would further impact adversely on the applicant's credibility, were incorporated into the record. Consequently, the director's findings that the applicant's oral testimony was inconsistent with other information in the record are withdrawn

The director, in denying the application on August 30, 2007, advised the applicant once again of the adverse evidence regarding Prime Stationers, Inc. and the letter dated April 2, 1990 purportedly

issued by the Consulate General of Pakistan in New York. The director noted that the applicant failed to submit a rebuttal to the Notice of Intent to Deny.

On appeal, counsel asserts in pertinent part:

Please note that the employment letter from Prime Stationers, Inc., submitted by [the applicant] was in 1990. In connection with this [the applicant] can not contact them because it has been over twenty years. Also in regards to the Pakistan consulate not knowing [the applicant's] issuance of his passport it is a grave error. [The applicant] renewed his passport and travel four times on that passport since it was issued.

The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988. The adverse information tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period, and the credibility of all documentation submitted in support of such claim. Neither counsel nor the applicant has presented any credible evidence to overcome the director's findings.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.