

U.S. Citizenship
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FILE: [REDACTED] Office: Chicago
MSC 02 236 62890

Date: **JAN 30 2008**

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:

[REDACTED]

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, Chicago, Illinois, 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 had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel contends that the affidavits submitted by the applicant are sufficient evidence to support his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel asserts that the applicant's testimony relating to his employment history was not contradictory but merely reflected the applicant correcting or adding information as it pertained to his employment history to the later filed Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act). Counsel submits a statement from the applicant and two affidavits 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 and 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 under the provisions of section 212(a) of the 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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 petitioner 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 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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act on October 23, 1990. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed ‘[REDACTED]’ in Brooklyn, New York from 1981 to 1987 and ‘[REDACTED]’ in Brooklyn, New York from 1988 to 1990. Further, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant indicated that he had only one absence from this country in that period from January 1, 1982 to May 4, 1988 when he traveled to Pakistan for an unspecified number of days from October 1987 to November 1987 for a family visit. In addition, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant indicated that he worked as a self-employed laborer from 1981 to 1984 and employment as a laborer for Pak General Construction from 1985 to 1990.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED] d. Mr. [REDACTED] stated that he had personal knowledge that the applicant left the United States in October 1987 and returned to this country in November 1987.

The applicant included an affidavit that is signed by [REDACTED] who declared that he had personal knowledge that the applicant traveled from the United States to Pakistan in October 1987. Mr. [REDACTED] noted that his knowledge was based upon the fact that he dropped the applicant at the airport and the applicant had taken presents and money intended for Mr. [REDACTED]’s family to Pakistan.

However, other than attesting applicant's purported absence from the United States in 1987, neither [REDACTED] nor [REDACTED] provided any specific and verifiable testimony relating to the applicant's residence in this country during that period from prior to January 1, 1982 to May 4, 1988.

The record shows that the applicant subsequently submitted another separate Form I-687 on an indeterminate date. At part #33 of this Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] in Brooklyn, New York from 1980 to December 1980 to March 1982, [REDACTED] in Brooklyn, New York from April 1982 to March 1984, and [REDACTED] in Brooklyn, New York from May 1984 to April 1989. Additionally, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant indicated that he had only one absence from this country in that period from January 1, 1982 to May 4, 1988 when he traveled to Pakistan for an unspecified number of days from October 1987 to November 1987 for a family visit. Furthermore, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant indicated that he was a self-employed house cleaner from December 1980 to December 1989.

The fact that the applicant provided contradictory testimony relating to his addresses of residence and employment history during the requisite period on the two separate Form I-687 applications contained in the record seriously compromises his credibility as well as the credibility of his claim of residence in the United States since prior to January 1, 1982.

Subsequently, on May 24, 2002, the applicant submitted his Form I-485 LIFE Act application. On the Form G-325A, Record of Biographic Information, which accompanied his Form I-485 LIFE Act application, the applicant indicated that he married his wife in Burewala, Pakistan in March 1984. The applicant's admission that he was absent from the country when he was married in Pakistan in March of 1984, directly contradicted his prior testimony at part #35 of both the Form I-687 applications that he had only been absent from this country on one occasion during the period in question when he traveled to Pakistan for an unspecified number of days from October 1987 to November 1987 to visit his family. The fact that the applicant failed to list this additional absence as well as the length and date of the absence further undermined the credibility of his claim of residence for the period in question.

The record shows that the applicant failed to include any further evidence in support of his claim of residence in the United States from prior to January 1, 1982 with the Form I-485 LIFE Act application.

The district director subsequently issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because he failed to submit sufficient evidence of continuous lawful residence in the United States from January 1, 1982 through May 4, 1988. In addition, the district director noted the applicant had provided contradictory testimony relating

to his employment history on the two separate Form I-687 applications contained in the record. However, the district director failed to mention the fact that the applicant had also provided contradictory testimony regarding his addresses of residence in this country on the two Form I-687 applications, as well as the fact that the applicant omitted his absence from the United States when he traveled to Pakistan to get married in March of 1984 on both of the Form I-687 applications contained in the record. In addition, the district director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) in evaluating the instant application and supporting evidence. Nevertheless, the district director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(f). The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted an affidavit signed [REDACTED]. Mr. [REDACTED] indicated that he had known the applicant as of unspecified date in 1981 when they met at a "religious occasion." [REDACTED] noted that he and the applicant continued to meet at different religious occasions and the applicant was a good family friend for a long time. While [REDACTED] attested to the applicant's residence in this country since 1981, he failed to provide any details such as where they met and the frequency of their contact. Although not required, the affiant failed to provide evidence that he resided in the United States. Further, [REDACTED] failed to provide his phone number, hence it is difficult to verify the contents of the affidavit.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application.

On appeal, the applicant reiterates his claims of residence and employment in the United States for the requisite period and indicates that he is unable to obtain contemporaneous documents to support such claim because he was an undocumented alien.

The applicant submits two affidavits that are signed by [REDACTED] and [REDACTED] respectively. Both affiants state that they had known the applicant since 1981 and indicate that they have knowledge that the applicant has resided in the United States since such date as a result of their relationship as his friend. However, neither [REDACTED] nor [REDACTED] provided any specific and verifiable testimony that would tend to corroborate the applicant's claim of residence in this country during the requisite period.

Counsel contends that the affidavits submitted by the applicant are sufficient evidence to support his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. However, two of the five affidavits submitted by the applicant relate solely to his purported absence from this country in 1987 and provide no other relevant testimony to support his claim of residence in the United States for the period in question. The remaining three affidavits submitted by the applicant are limited in probative value as these documents lack

sufficient detail and verifiable information to substantiate the applicant's claim of residence in this country since prior to January 1, 1982.

Counsel asserts that the applicant's testimony relating to his employment history was not contradictory but merely reflected the applicant correcting or adding information. However, the explanation advanced by counsel cannot be considered as reasonable because the applicant provided different employment histories on the two separate Form I-687 applications that do not match as to type of employment, names of employers, and dates of employment. If the applicant was merely correcting or adding information as it related to his employment history, revisions would logically produce an inclusion of previously listed types of employment, employers, and dates of employment rather than two separate, distinct, and exclusive listings of his employment history.

In addition, the applicant also offered contradictory testimony regarding his addresses of residence in this country on the two Form I-687 applications and omitted his absence from the United States in March of 1984 when he traveled to Pakistan to be married on both of the Form I-687 applications. The contradictions and conflicts cited above cannot be reconciled as mere corrections or additions to prior testimony.

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 application. 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 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the fact that the applicant himself offered conflicting testimony that contradicts critical elements of his claim of residence all seriously undermine the credibility of both the applicant's claim of residence for the period in question and the credibility of the documents submitted in support of such 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he or she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E--M--*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal probative value and his own contradictory testimony, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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