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U.S. Citizenship
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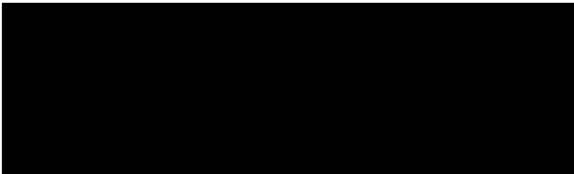
Applicant:



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. 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, Phoenix, Arizona, 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 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, the applicant asserts that he had provided an explanation for the inconsistencies in his LIFE application along with sworn affidavits. The applicant asserts that contrary to the director's decision, the evidence submitted proves by a preponderance that he is eligible for the benefit being sought.

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. Section 1104(c)(2)(B)(i) 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 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)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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

- A notarized letter from [REDACTED], owner of Atlanta Bangla Agency, Inc., in Chamblee, Georgia, who indicated that he has personally known the applicant for many years and that the applicant was in his employ from March 25, 1986 to January 15, 1989.
- Notarized statements from [REDACTED], who indicated that the applicant resided in his New York apartment from April 1, 1983, to June 30, 1983, and was in his employ at his stationery store in New York City from April 20, 1985, to June 30, 1985.
- A notarized statement from [REDACTED] who indicated that the applicant resided with him from March 15, 1981, to April 9, 1982, and attested to the applicant's moral character.
- A notarized letter from [REDACTED], CEO/president of Nupar Indian Restaurant/Bar in New York, New York, who indicated that the applicant was in his employ as a full-time bus person from March 20, 1981, to April 15, 1982.

In response to a Form I-72 issued on May 3, 2004, which requested the applicant to submit evidence of his employment from the Donut Place as well as evidence of his physical presence from November 6, 1986, through May 4, 1988. The applicant submitted:

- **An additional notarized letter from [REDACTED] owner of Choudhury Financial Services in Atlanta, Georgia, who indicated that the applicant was in his employ from April 1986 to January 1989 and resided in his home. The affiant asserted, "He lived his entire duration in Atlanta."**
- **A notarized letter from [REDACTED] of Suwanee, Georgia, who attested to the applicant's residence in Norcross, Georgia and that she has remained friends with the applicant since their first meeting.**

Regarding his employment at a doughnut store, the applicant stated, "I was employed by the Donut Place in Queens, New York from May 1982 to April 1985," and that he received his wages in cash from his boss and owner, [REDACTED]. The applicant indicated that he had tried but was unable to locate [REDACTED] as the store was no longer in business. The applicant asserted that in April 1986, he decided to move from Queens, New York to Atlanta, Georgia and resided at his employer's, [REDACTED] home at [REDACTED] Norcross, Georgia from April 1986 until January 1989. The applicant asserted that during his period of stay in Georgia, he worked for [REDACTED] at his insurance business doing office work.

On July 12, 2006, the director issued a Notice of Intent to Deny, which advised the applicant of inconsistencies between his application, oral testimony and documents submitted. Specifically: 1) Mr. [REDACTED] attested to the applicant's employment from March 1981 to April 15, 1982; however, no documentation was submitted to support this employment and the Form I-687 application did not support this employment; 2) [REDACTED] attested to the applicant's residence in Georgia from March 1986 to January 1989; however, the Form I-687 application indicated the applicant's residence in Jackson Heights, New York from 1981 to 1989; and 3) the applicant indicated that he was employed at the Donut Place in Queens, New York from May 1982 to April 1985; however, on his Form I-687 application, this employment was not

claimed. The director noted that the applicant only claimed employment at Royal Bengal Restaurant on his Form I-687 application during the requisite period. The director indicated that the inconsistent and contradictory statements from the affiants were insufficient to establish the applicant's continuous residence in the United States during the requisite period.

In response, the applicant's former counsel indicated that the applicant "acknowledges that some of the information provided in his Form I-687 in 1990 contradicts some information provided in the various affidavits he submitted and that for this reason the evidence is -at first glance- subject to lessened credibility." Counsel indicated that in the enclosed affidavit, the applicant explains that the attorney he hired to prepare his Form I-687 application in 1990 simply did not document the information the applicant communicated to him.

In his affidavit, the applicant asserted, that the day he went to his attorney's office, it was crowded with approximately 50 to 60 people. The applicant stated that the time he spent with the attorney "was very hurried and rushed. It seemed that he was in a hurry to get through all the clients waiting, since there were so many people there." The applicant asserted, in pertinent part:

The attorney in Florida didn't want to write down information on each specific job I provided at that time. He may have overlooked my full-time job at Nupur Indian Restaurant while I worked from March 1981-April 1982, which was mentioned in a separate affidavit I submitted. The attorney noted only my part time job at Royal Bengal Restaurant where I worked only few hours a month. I did not work at the Royal Bengal Restaurant after April 1982.

I worked full-time at the Donut place from May 1982 -April 1985. I did not work at the Royal Bengal Restaurant during that time. I don't know why my job at the Donut place was not provided in the original application, because I did mention this job to my attorney at the time we were filling out the application.

Since the attorney was in such a hurry, he also didn't want to write down that I lived and worked in Georgia from March 1986-1989, and he just put down that I went from New York to Florida.

I lived in several apartments between March 1981 and April 1985. I tried my best to recall the correct addresses. However, as I recall, [REDACTED] was not the address I lived in, as the application states. It should have been [REDACTED]. I lived with [REDACTED] in that address, which I believe I mentioned in my interview. Mr. [REDACTED] also mentioned in his affidavit that I lived with him at that address. [REDACTED] might be a typo in the application.

When I worked for [REDACTED] at the Nupur Indian Restaurant I worked without employment authorization and was paid in cash, therefore, no employment records exist for Mr. [REDACTED] to produce.

The applicant stated that he was submitting a money order receipt that he sent to his uncle in Bangladesh in 1983 and "an invitation note from an old friend to attend a funeral ceremony of his uncle's wife in the year 1984."

The district director considered statements of the applicant and his former counsel and concluded that they were not sufficient to overcome the inconsistent and contradictory statements and affidavits previously provided. The director noted that the funeral service document was in the Spanish language without the required English translation and the document did not contain any identifiable indication that

it was specially mailed or issued to the applicant. As such, the director denied the application on September 26, 2006.

On appeal, the applicant submits two envelopes postmarked with indecipherable dates along with copies of the documents that were previously provided.

The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as he has presented contradictory documents, which undermines his credibility. Specifically:

1. The applicant contends that the inconsistent information on his Form I-687 application was caused by his former attorney. The applicant, in affixing his signature on item 46 of his Form I-687 application, certified that the information he provided was *true* and *correct*. As conflicting statements have been provided, it is reasonable to expect an explanation from the preparer in order to resolve the discrepancy. However, no statement from the alleged preparer has been submitted to corroborate the applicant's statement. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).
2. [REDACTED] and [REDACTED] only attested to the applicant's residence for a short period of time, March 1981 to April 1982 and April 1983 to June 1983, respectively. The applicant has not provided any evidence to establish his place of residence in the United States from May 1982 to March 1983 and from July 1983 to March 1986.
3. Contrary to the applicant's claim, [REDACTED] in his affidavit, did not specify where his "apartment" was located in New York. In addition, neither the [REDACTED] nor the [REDACTED] Ave addresses were listed on the applicant's Form I-687 application as his place of residence.
4. [REDACTED], in his affidavit, attested to the applicant residing with him, but failed to include the applicant's address of residence during the period that he was residing with him.
5. In his initial letter, [REDACTED] attested to the applicant's employment from March 25, 1986. However, the applicant, in his affidavit, indicated that he did not move to Georgia until April 1986.
6. [REDACTED]'s letter failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.
7. The letter from [REDACTED] has no probative value as it fails to indicate the time period in which she met the applicant.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 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.