



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 01 300 60255

Office: NEW YORK

Date: JUL 02 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. 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 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, New York, 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 since that date through May 4, 1988.

On appeal, counsel asserts that the evidence submitted by the applicant was sufficient to warrant a favorable exercise of discretion.

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)(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 entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, dated July 27, 2001. In the Notice of Intent to Deny (NOID), dated October 24, 2006, 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 granted the applicant thirty (30) days to submit additional evidence. The record reflects that no additional evidence was received. In the Notice of Decision, dated December 7, 2006, the director denied the instant applicant based on the reasons stated in the NOID.

The record reflects that the applicant was interviewed on August 22, 2002. During the interview, the applicant asserted that he entered the United States on August 8, 1981, through Canada. The applicant provided no evidence to corroborate his claimed entry. In support of his claim of continuous unlawful residence, the applicant submitted several affidavits and declarations. The record contains a declaration from [REDACTED] M.D., who stated that the applicant has been a patient at the Okyeniba Clinic from May 1, 1987, to February 6, 1999. The declarant failed to state the applicant's place of residence during the above time period or state that the applicant continuously resided in the United States during the statutory period. The declarant indicated that the applicant had visited the Clinic on May 1, 1987, and subsequently in October 1988, over a year later. One visit to the Clinic in May 1987 does not establish the applicant's continuous unlawful residence in the United States. The declaration provides little probative value.

The record contains a declaration, dated April 2, 1989, from [REDACTED] manager at Eigen Supply Co., Inc. Mr. [REDACTED] stated that the applicant has been employed by the company as a store assistant since February 1982. He failed to provide the applicant's address at the time of employment, 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 as required under the regulation at

8 C.F.R. § 245a.2(d)(3)(i). The absence of detailed information detracts from the credibility of the declarant.

The record contains three virtually identical affidavits from [REDACTED] and [REDACTED]. All of the affidavits are dated on June 5, 1989. All of the affiants stated they have personal knowledge that the applicant resided in the United States at [REDACTED] in New York from August 1981 to the present (1989). While all of the affiants provided their place of residence, they failed to provide sufficient details regarding their relationship with the applicant, how they met or how they dated their acquaintance with the applicant. There is no proof that the affiant has direct personal knowledge of the events and circumstances of the applicant's entry or residency. There is no proof that the affiants were present in the United States during the statutory period. The fill-in-the blank nature of the affidavits and the lack of sufficient details detract from the credibility of the affiants.

The record also contains two affidavits from [REDACTED] the applicant's uncle. In both affidavits, [REDACTED] stated that the applicant lived with him at [REDACTED] in New York from December 1981 to August 1984, and at [REDACTED] from September 1984 through July 1990. He also provided the applicant's current place of residence. Mr. [REDACTED] statements are inconsistent with the statements of the above affiants. In addition, Mr. [REDACTED] statement is inconsistent with the applicant's Form I-687, Applicant to Adjust Status as a Temporary Resident, dated October 27, 1989. In his Form I-687, the applicant stated that he resided at [REDACTED] from December 1981 to the present (1989). This discrepancy seriously brings into question the credibility of the applicant's claim.

The record also contains an affidavit from [REDACTED] who stated that the applicant resided at [REDACTED] in Bronx, New York, from February 1986 to June 1990. Mr. [REDACTED] statement is inconsistent with the applicant's Form I-687 and with all of the previous affiants' statements. 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.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. See, e.g., *Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. The record contains numerous contradictions between the statements of the applicant and his affiants, as well as between the affiants themselves. 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 numerous discrepancies, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, 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