



U.S. Citizenship
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Services

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[REDACTED]

FILE:

MSC 02 331 60732

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 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, 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 through May 4, 1988.

On appeal, counsel contends that the applicant has submitted sufficient affidavits to establish his claim. Counsel also contends that the applicant did not willfully misrepresent a material fact in order to procure an immigration benefit.

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)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

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.

In support of his claim, the applicant submitted various types of evidence, including receipts, employment letters, affidavits, and copies of postmarked envelopes. The dates on the postmarked envelopes are not legible and, therefore, provide no probative value. The applicant submitted various receipts, but only one of the receipts is dated within the statutory period. The relevant receipt, dated June 13, 1984, contains the applicant's address in Brighton Beach, Brooklyn. This is inconsistent with the applicant's Form I-687, Application for Status as a Temporary Resident, which indicates the applicant did not reside in Brighton Beach until July 1987. This discrepancy brings into question the credibility of the evidence as well as the applicant's claim.

The applicant also submitted four letters of employment from three different employers. It is noted that the applicant only listed two employers during the statutory period in his Form I-687, C.A.C. Construction Co. and Olympia General Construction Co. The applicant failed to submit any documentation from Olympia General Construction Co.

The applicant submitted declarations from [REDACTED] and [REDACTED]. Mr. [REDACTED] manager at T.J. Construction Co., stated that the applicant worked at the company from July 1981 to June 1987. Mr. [REDACTED], president of D&K Fuel Inc., stated that the applicant worked for his gas station occasionally from 1987 to 1990. Both employers failed to provide the applicant's place of residence during the employment period, 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). Also, as previously noted, the applicant failed to list both employers on his Form I-687. The lack of details, coupled with the discrepancy with the applicant's Form I-687, brings into question the credibility of the declarants.

The applicant also submitted letters of employment from C.A.C. Contracting Co. by manager [REDACTED] and president [REDACTED]. [REDACTED] stated that the applicant had been employed as a seasonal worker since March 1988. Mr. [REDACTED] stated that applicant had worked at company since August 1987 through December 1990. Mr. [REDACTED] s statement is inconsistent with that of Mr. [REDACTED]. In addition, neither affiant provided the applicant's place of residence during the employment period, declared whether the information was taken from company records, and identified the location of such company records and stated whether such records are accessible or in the alternative stated the reason why such records are unavailable as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Furthermore, Mr. [REDACTED]'s statement is inconsistent with the applicant's own statement in his Form I-687. The applicant stated that he worked for the company beginning in March 1988; whereas Mr. [REDACTED] stated August 1987. These discrepancies cast serious doubt on the credibility of the applicant's claim.

The record also contains a notarized declaration from [REDACTED]. Mr. [REDACTED] stated that he has known the applicant in the United States from 1981 through 1987. Mr. [REDACTED] also stated that the applicant worked with him many times as a seasonal laborer in construction. However, Mr. [REDACTED] failed to state their employer(s), the applicant's place of residence during the statutory period, how he met the applicant or how he dated their acquaintance. The declaration provides minimal probative value.

The record contains an affidavit from [REDACTED]. Mr. [REDACTED] stated that the applicant resided in Brooklyn, New York from July 1987 through April 1990. He stated that they paid rent, grocery and electric gas bills together. While Mr. [REDACTED]'s statements are consistent with the applicant's Form I-687, he failed to submit any documentation to substantiate his claims, such as a lease agreement, receipts during the relevant period, etc. The affidavit provides minimal probative value.

The record contains an affidavit from [REDACTED], who stated that the applicant has resided continuously in the United States since 1981 until the present (1990), except for the applicant's brief visit to Pakistan in 1987. The affiant provided general details about his relationship with the applicant, but he failed to state how he specifically met the applicant and the applicant's place of residence in 1981 until he moved to [REDACTED]. The affidavit provides minimal probative value.

The record also contains a June 1, 1990, declaration from [REDACTED], president and chief minister of United American Muslim Association of New York Inc. Mr. [REDACTED] stated that the applicant has been participating regularly in Friday prayers and other religious ceremonies since November 1981. The declarant failed to state the address where the applicant resided during membership period,

establish how the author knows the applicant and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The AAO also notes that the applicant did not indicate an affiliation with any club, organization, church, etc. in his Form I-687. This inconsistency casts doubt on the credibility of the declarant's claim.

Although the applicant has submitted several types of evidence in support of his application, the applicant has not provided sufficient evidence of residence in the United States during the duration of the requisite period. The record contains numerous inconsistencies which detract from the credibility of the applicant's claim. The record contains a receipt, letters of employment and affidavits, all of which contain serious discrepancies. 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.

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 and minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Finally, it is noted that in the Notice of Decision, the director determined that the applicant had submitted a deceitful airline ticket to substantiate his claimed absence from the United States in June 1987. The date on the ticket is June 4, 1987. The director noted that "Rev. 3-89" is printed on the back of the ticket. The director questioned the authenticity of the ticket stating that it was printed or revised in March 1989. In response, the applicant submitted his own notarized declaration, dated October 17, 2006. The applicant stated that some time after his return to the United States from Pakistan, he contacted the agent and asked him to send him the ticket, which he had returned to the agent in Pakistan. The applicant stated that he didn't have money at the time, but he told the agent he would pay him later. This implies that the applicant paid money to have the agent provide him with a ticket to submit as evidence. On appeal, counsel indicated that the applicant had an honest belief that the ticket he submitted was the ticket he used to travel to Pakistan in June 1987. This explanation is found to be unreasonable under the circumstances. The fact that the applicant submitted a ticket dated on 1987 but printed on a form appearing to list a revision date in 1989 casts some doubt on the applicant's claim to have resided in the United States during the statutory period. The explanation provided by the applicant on appeal fails to overcome this doubt.

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.