

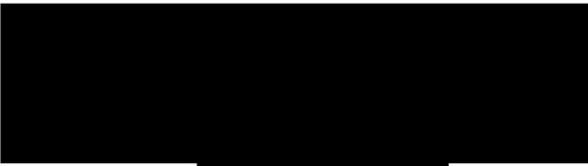
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date: JUL 03 2008

MSC 02 092 63812

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).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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, New York, 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 for the applicant states that the director erred in denying the application because the director failed to give adequate weight to the evidence submitted. Counsel further asserts that the applicant submitted sufficient credible evidence to establish eligibility.

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 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.

In the Notice of Intent to Deny (NOID), the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant submitted five affidavits in support of his claim; however, the affidavits had various deficiencies, were not accompanied by a government issued photo identification, and there was no daytime telephone number for the affiants for verification. The director also noted that the applicant failed to submit corroborative evidence. The director granted the applicant thirty (30) days to submit additional evidence.

The record reflects that the applicant's response to the NOID consisted of a letter from the applicant's attorney stating that the applicant has submitted sufficient credible affidavits from three individuals accompanied by identification in the form of copies of affiant's naturalization certificate, and address and phone numbers for verification. With his response to the NOID, counsel submitted an affidavit by [REDACTED], attesting to knowing the applicant since 1981 and that he worked with the applicant at various restaurants in New York. No additional evidence was received. In the Notice of Decision, dated September 27, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted discrepancies which pertain to the applicant's claimed employment history in the affidavits submitted and in the record.

On appeal, submits counsel states that the applicant has met his burden of proof as he has submitted available proof and cannot be expected to produce other proof from almost 20 years ago.

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. The applicant submitted a letter of employment and affidavits as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letter

The applicant submitted a letter of employment, dated October 10, 1990, from [REDACTED], Owner-Manager of [REDACTED], stating that the applicant worked as a Waiter at his restaurant located at [REDACTED] New York, N.Y 10036, from August 1987 to September 1990.

However, [REDACTED] failed to provide information on the applicant's address at the time of employment, and she does not show periods of layoff, 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 8 C.F.R. § 245a.2(d)(3)(i). Also, [REDACTED] failed to specify the date in 1981 when the claimed employment commenced.

In addition, the applicant submitted a second sworn affidavit from [REDACTED], dated May 10, 2006, stating that the applicant worked as a Waiter at her restaurant at different locations from 1981 until December 1995. Although [REDACTED] provided information on the applicant's address at the time of employment, as in her first affidavit, she does not show periods of layoff, 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 8 C.F.R. § 245a.2(d)(3)(i). Also, [REDACTED] failed to specify the date in 1981 when the claimed employment commenced.

The letter of employment and the affidavit from [REDACTED] are inconsistent. In her employment letter, which predates her affidavit, [REDACTED] states that the applicant worked at her restaurant located at [REDACTED] New York, N.Y 10036, from August 1987 to September 1990. However, in her affidavit, she states that the applicant worked at different locations from September 1981 until December 1995. Although [REDACTED] states that the applicant worked at various locations from September 1981 until December 1984, she does not indicate an employment location for the period from August 1984 through July 1987. The employment letter and the affidavit are also inconsistent with the applicant's Application for Status as a Temporary Resident, Form I-687, signed on October 29, 1990, wherein the applicant indicated that he worked as a Waiter only at the Nupar Indian Restaurant, located at 819 2nd Avenue, New York, from August 1984 to May 1987. The applicant does not indicate on the Form I-687 that he worked at any of the locations of the Ajanta India Restaurant between September 1984 and July 1987, and [REDACTED] does not list the Nupar Indian restaurant as her restaurant. [REDACTED]'s letter and her affidavit also contradicts the affidavit from [REDACTED], who attests that the applicant worked with him at the Ajanta India Restaurant located at 156 West 44th Street, New York, N.Y 10036, from September 1981 to August 1984, at another location of Ajanta India Restaurant at 1237 Amsterdam Avenue, New York, NY, from August 1987 to September 1991, and at Café Lily India Restaurant from 1991 - 1995. It is also noted that the applicant did not submit any employment-related evidence to corroborative his claimed employment. It is reasonable to expect that the applicant would be able to provide work-related documentation, such as earnings statements, to substantiate his claimed employment given that he claims that he had been employed throughout the period from 1981 through 1991. These discrepancies cast doubts on whether the applicant's claimed employment history is genuine. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any

objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect

Affidavits and Letters

The applicant submitted two affidavits from [REDACTED], sworn to on October 29, 2001, and May 11, 2006 respectively, stating that the applicant is his relative, and he has known the applicant to reside at various locations in the United States from July 1981. [REDACTED] lists various addresses in New York where the applicant has resided during the period and states that he and the applicant did things together and frequently visited each other's homes. [REDACTED] states that the applicant has been a continuous resident of the United States since that time. However, the affiant does not provide any contemporaneous documentation to support his assertions.

The applicant also submitted two affidavits from [REDACTED], sworn to on October 29, 2001, and on May 9, 2006, respectively. [REDACTED] states that the applicant is his relative and best friend, and that he worked with the applicant at the Ajanta India Restaurant located at 156 West 44th Street, New York, N.Y 10036, from September 1981 to August 1984. [REDACTED] also states that he worked with the applicant at another location of Ajanta India Restaurant at 1237 Amsterdam Avenue, New York, NY, from August 1987 to September 1991, and at Café Lily India Restaurant from 1991 – 1995; he lists various addresses in New York where the applicant has resided; and, he states that he and the applicant did things together and frequently visited each other's homes. Mr. [REDACTED] states that the applicant has been a continuous resident of the United States since that time. However, the affiant does not provide any contemporaneous documentation to support his assertions.

The applicant also submitted a filled-in form affidavit from [REDACTED], dated October 10, 1990. [REDACTED] states that he knew the applicant lived at [REDACTED], Bronx, New York, NY 10456 since August 1981, and that he worked with the applicant at the Ajanta India Restaurant and that he shared an apartment with the applicant and two other roommates. Mr. [REDACTED], however, does not state how he dates his acquaintance with the applicant and whether the applicant has been a continuous resident of the United States since that time.

The applicant also submitted an unsigned and undated document, in affidavit form, from [REDACTED]. This document, however, is not probative as its authenticity cannot be determined.

The applicant also submitted a filled-in form affidavit from [REDACTED], dated October 6, 1990. [REDACTED] states that he knows that the applicant, who is a relative, came to the United States in September 1981. [REDACTED] however, does not state whether the applicant has been a continuous resident of the United States since that time.

The applicant also submitted a filled-in form affidavit from [REDACTED], dated October 29, 1990. [REDACTED] states that he has known the applicant, who is his friend, since August 1981. Mr. [REDACTED] however, does not state how he dated his acquaintance with the applicant, whether and when

he has known the applicant in the United States, and whether the applicant has been a continuous resident of the United States since that time.

In addition the applicant submitted copies of ten mail envelopes addressed to the applicant in New York. These envelopes, however, have cancelled postage stamps with unclear dates and their authenticity cannot be determined. The envelopes are, therefore, not probative.

Although the applicant has submitted letters and affidavits in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In addition, although the applicant claims that he has resided in the United States since July 1981, the applicant has not provided any contemporaneous evidence in support of his claim. It is reasonable to expect that the applicant would be able to provide some reliable contemporaneous documentation if he has been in the United States since 1981 as he claims. Given the applicant's reliance upon documents with minimal probative value, 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.

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.