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FILE:

[Redacted]
MSC 02 019 61061

Office: DALLAS

Date:

MAR 17 2008

IN RE: Applicant:

[Redacted]

APPLICATION:

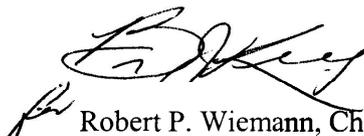
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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, Dallas, Texas, 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 asserts that the director erred in not giving more weight to letters and biographic information presented by the applicant.

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).

In an attempt to establish continuous unlawful residence in the United States during the requisite period in this country since prior to January 1, 1982, the applicant provided three affidavits:

- A form affidavit by [REDACTED] dated November 26, 1990. [REDACTED] states that he first met the applicant at a friend's wedding in Brooklyn, New York, and he listed various New York addresses for the applicant from July 16, 1981 through September 30, 1990;
- A form affidavit by [REDACTED] dated November 6, 1990. [REDACTED] states that the applicant resided with him at [REDACTED] Brooklyn, New York, 11233, from July 16, 1981 to May 24, 1982. [REDACTED] states also that rent receipts and household bills are in his name and the applicant contributed payment towards these bills; and,
- An affidavit by [REDACTED], dated May 29, 2003, stating that he has known the applicant since July 1981, and that the applicant resided at [REDACTED] from July 16, 1981 to May 24, 1982.

All these affiants stated that they have known the applicant to have resided in New York from July 16, 1981 to May 24, 1982.

Although the applicant has submitted these 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. [REDACTED], stated how he met the applicant, and listed addresses for him from July 16, 1981 through September 30, 1990. However, [REDACTED] did not indicate how he dated his acquaintance with the applicant, or how frequently he saw the applicant. None of the other affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. 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. 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.

It is noted that the applicant provided addition documents which do not establish his residence in the United States during the duration of the requisite period. Specifically, the applicant submitted:

- Nine affidavits all of which clearly relate to periods from May 1982. Two of the affiants stated that they have known the applicant since May 1982. The other seven affiants date their acquaintance to the applicant after May 1982;
- An affidavit from [REDACTED] dated December 6, 1990, stating that he hired the applicant to care for his father. [REDACTED] does not indicate when the employment began or when he first became acquainted with the applicant;
- 13 envelopes addressed to the applicant in the United States. Five of the envelopes are date-stamped in December 1982, April 1983, September 1983, February 1984, and July 1987. The remaining 8 envelopes are post-marked in 1990.

Although the applicant has submitted these documents in support of his application, none of these documents relate to the requisite period beginning prior to January 1, 1982, and the applicant has not provided any additional contemporaneous evidence of residence in the United States during the duration of the requisite period. Given that none of these documents relate to the period from before January 1, 1982 through April 30, 1982, the evidence as a whole does not establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

In the Notice of Intent to Deny (NOID), dated January 3, 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 noted that the applicant submitted the following questionable receipts:

1. A merchandise receipt from [REDACTED], dated September 28, 1981, with an address at [REDACTED] Brooklyn, New York, and with telephone number [REDACTED]
2. A generic receipt, dated April 14, 1983, with telephone number [REDACTED]
3. 3 rent receipts written by [REDACTED], dated in March 1982, April 1982, and June 1982, all with telephone number [REDACTED]

Specifically, the director noted that although the receipts are dated in 1981, 1982 and 1983, the [REDACTED] area code was not created until 1984.

The record reflects that the applicant's response to the NOID consisted of statement wherein he reproduced his recollection of the answers that he gave at the interview on June 11, 2003, and disavowed having knowledge of [REDACTED] and the receipts referred to in the NOID.

In his denial notice the director noted additional discrepancies in documents submitted, including letters purported issued on behalf of the applicant from [REDACTED], and from [REDACTED] Movement in Islam, Inc.

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 submitted evidence is not relevant, probative, and credible.

As determined by the director, the applicant failed to submit sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. As noted by the director, the applicant submitted several receipts and letters that are not reliable, such as the rent receipts issued in 1982 which show a [REDACTED] area code for telephone numbers on the receipts. However, as the director correctly pointed out, the [REDACTED] area code came into use in 1984. 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 and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status 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.