



U.S. Citizenship  
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Services

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FILE:

MSC 03 214 61077

Office: NEW YORK

Date: **MAY 09 2008**

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. Wieman, 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, the applicant reasserts his eligibility for permanent resident status under the Legal Immigration Family Equity (LIFE) Act, and submits additional evidence.

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 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.

In the Notice of Intent to Deny (NOID), dated April 6, 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 contrary to the applicant's testimony at an interview on July 27, 2004 that he entered the United States in September 1981 by crossing the Canadian border, on the applicant's Biographic Information, Form G-325A, submitted in connection with his legalization application, the applicant stated that his last address outside of the United States for more than one year was in Golapgonj, Sylhet, Bangladesh, where he resided from January 1964 until September 1985. The director also noted that the applicant stated that he departed the United States on May 25, 1987 to Canada for one month and returned to the United States on June 24, 1987.

The record reflects that the applicant responded to the NOID. The director noted that the response was comprised of an affidavit by the applicant stating that the paid preparer furnished the wrong dates on the Form G-325A. In the Notice of Decision, dated July 20, 2006, the director denied the instant application based on the reasons stated in the NOID.

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, although the applicant claims that he first entered the United States in September 1981, the applicant failed to provide reliable supportive documentation, such as passport stamps or other travel documentation. It is reasonable to expect that the applicant would be able to provide documentation to confirm his claimed travel from his country into Canada, and his claimed re-entry into the United States in 1987. However, no such documentation was provided. 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.

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 the following:

1. An affidavit by [REDACTED], dated August 2, 2006. Mr. [REDACTED] states that the applicant was his roommate from November 1981 to August 1987, when they shared a residence at [REDACTED], Jackson Heights, New York, 11372;
2. An employment letter from [REDACTED] Manager, Hira India Restaurant, dated August 25, 1992. Mr. [REDACTED] states that the applicant had been employed from November 1982 to December 1984;
3. An affidavit by [REDACTED], dated September 22, 2001. Mr. [REDACTED] states that he has known the applicant since boyhood, and the applicant has resided in the United States since 1981

Although the applicant has submitted these documents 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 applicant's presence in the United States during the requisite period. Mr. [REDACTED] states that the applicant shared a residence with him in the United States from November 1981 to August 1987. However, Mr. [REDACTED] did not indicate how he dated his acquaintance with the applicant, or provide any documentation in support of his claimed period of residence with the applicant. Mr. [REDACTED] Ahmed states that he has known the applicant since boyhood, and the applicant has resided in the United States since 1981, and that the applicant visits him periodically. But, he does not indicate how he dates the applicant's residence in the United States, or how he knows when the claimed residence began. Mr. [REDACTED] states that the applicant was employed from November 1982 to December 1984, but he does not state when in 1982 he met the applicant and how he dates his acquaintance with the applicant. Also, the letter of employment refers to periods from November 1982, and does not provide sufficient information to determine whether the applicant entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. Furthermore, the letter failed to provide the applicant's address at the time of employment, 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).

The applicant also submitted the following documentation:

- A letter from [REDACTED] General Secretary, Islamic Council of America, Inc., dated April 10, 2004. Mr. [REDACTED] states that he has known the applicant since 1984, and that the applicant has since attended weekly prayer at the Madina Masjid facility managed by the Islamic Council of America, Inc.;

- An affidavit from Mr. [REDACTED] dated September 18, 2001. Mr. [REDACTED] states that he has known the applicant since 1985;
- An affidavit from Mr. [REDACTED], General Secretary, Jalalabad Association of America, Inc., dated September 18, 2001. Mr. [REDACTED] states that he has known the applicant to be a member of the Jalalabad Association of America, Inc since January 1988;
- A letter from [REDACTED], Manager, French Roast, Inc., dated September 1, 2001. Mr. [REDACTED] states that the applicant has been employed there for the past six years;
- A letter from [REDACTED], on behalf of Hamburger Harry's, dated September 22, 2001. Mr. [REDACTED], states that the applicant was employed as a "Bus Person" from 1994 to December 1995; and,
- A letter from [REDACTED], on GHANDI restaurant letterhead, dated September 15, 2001. Mr. [REDACTED] states that the applicant was employed as a "Bus person" from September 1987 to September 1993.

Although the applicant has submitted these documents in support of his application, the documents do not establish his residence in the United States during the entire duration of the requisite period from prior to January 1, 1982, through May 4, 1988.

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.

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.