



U.S. Citizenship
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FILE:

MSC 02 106 64295

Office: HOUSTON

Date:

MAY 19 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. 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, Houston, 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 erroneously based the denial on inaccurate and/or inconsequential factual determinations. In support of this contention, counsel submits a brief and additional evidence for consideration.

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).

On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on December 19, 1989, the applicant stated that he entered the United States on December 1, 1981, when he crossed the Mexican border without inspection. On this form, he also provided his address and employment history. The applicant claimed to reside at the following addresses in Houston during the relevant period:

December 1981 to December 1985:

January 1986 to July 1988:

He claimed to work for "Stop and Gas" as a cashier from January 1982 to April 1984, but provided no address for the company. Further, he claimed to work at odd jobs, such as yard work, from May 1985 to September 1988.

The AAO concurs with the director's finding that the applicant failed to submit sufficient evidence to establish continuous unlawful residence and physical presence in the United States during the requisite periods. In an attempt to establish continuous unlawful residence since before January 1982 through May 4, 1988, the applicant furnished the following evidence:

- (1) Affidavit dated December 12, 1989 by [REDACTED]. The affidavit is difficult to read, but it appears that the affiant claims to have known the applicant since 1981.
- (2) Photocopy of lease agreement dated December 5, 1982 for the property at [REDACTED]. The lease does not identify the owner, nor does it show the signatures of the parties. The term of the lease is January 1, 1985 to December 30, 1985.
- (3) Affidavit dated December 16, 1989 by [REDACTED], claiming that he has known the applicant since 1980. Specifically, the affiant claims that at the time, the applicant was working for Chutia Associates, Inc. He further claims that he and the applicant have been friends since then, and that they also worked in a grocery store together from March 1985 through December 1985. The affiant does not state the name of the grocery store.

The applicant also submitted the following affidavits in support of his attempts to file an application for legalization. While the contents of these documents are not specific to the issue being reviewed on appeal, they pertain to the applicant's alleged presence in the United States in 1988:

- (4) Affidavit dated January 26, 2001 by [REDACTED] claiming that he drove the applicant to the immigration office in Houston in March of 1988.
- (5) Affidavit dated January 26, 2001 by [REDACTED] claiming that in March 1988, the applicant borrowed money from him for his application filing fee.
- (6) Affidavit dated January 26, 2001 by [REDACTED], claiming that the applicant told him in March 1988 that he was going to submit his immigration application to the Houston office.
- (7) Undated affidavit by [REDACTED] claiming that he accompanied the applicant to the Houston immigration office in November 1987 and stood in line with him for a few

- (8) Affidavit dated January 26, 2001 by the applicant, claiming that he went to the Houston office in March 1988.

In the Notice of Intent to Deny (NOID), dated February 22, 2005, 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 insufficient affidavits and a suspicious lease, and granted the applicant thirty (30) days to submit additional evidence. The record reflects that on March 22, 2005, counsel for the applicant requested an extension of the response time, which was granted by the director on April 26, 2005. While the record contains a timely response, the evidence submitted was not considered by the director, and the application was denied based on the reasons stated in the NOID.¹

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 affidavits and a copy of a lease agreement as evidence to support his Form I-485 application. Here, the applicant has failed to meet this burden.

In response to the NOID, the applicant submitted the following four affidavits:

- (1) Affidavit dated May 16, 2005 by A [REDACTED], claiming that she was first introduced to the applicant in the mid-summer of 1986, when she met the applicant at a flea market. She claims that he was performing odd jobs at that time. She further claims that thereafter, she referred him to some of her acquaintances to perform yard work.
- (2) Affidavit dated May 16, 2005 by [REDACTED] claiming that he first met the applicant in 1985 when he was doing yard work.
- (3) Undated affidavit by [REDACTED]n, claiming that he has known the applicant since 1981 when he met him through a mutual friend.
- (4) Undated affidavit by [REDACTED], claiming that he was first introduced to the applicant at a celebration gathering for a cricket game win in 1981. He further claims

¹ The director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

that he frequently accompanied the applicant to watch him play cricket over the course of a few summers.

The applicant submitted a total of eleven affidavits, five of which pertain to the circumstances surrounding his attempt to file a legalization application. None of these affidavits, however, are persuasive. The affidavit by [REDACTED] is very difficult to read, and the only evidentiary value it holds is the affiant has known the applicant since 1981. The remaining statements are illegible, and the document itself fails to provide any details regarding the nature of their relationship.

The affidavit by [REDACTED] is confusing, for he claims that he has known the applicant since 1980, although the applicant claims that he did not enter the United States until December 1, 1981. Furthermore, the applicant claimed to work at a "Stop and Gas" from January 1982 to April 1984, yet Mr. Shah claims that as early as 1980, he worked with the applicant at Chutia Associates, Inc., an employer never named or mentioned by the applicant. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The five affidavits pertaining to the circumstances surrounding the applicant's failed attempts to file a legalization application in 1987 and 1988 are also deficient. The AAO acknowledges them because they place the applicant in Houston, Texas in March 1988 and November 1987. However, the information contained in these affidavits is too minimal to ascertain whether the applicant was maintaining continuous unlawful residence or continuous physical presence in the United States, since these documents, at best, described one or two days during this period.

Finally, the four affidavits submitted but not considered by the director in response to the NOID are also insufficient. Each affiant describes his or her first encounter with the applicant. However, none of the affiants provide the location of their meeting, the nature of their relationship with the applicant at the time of the meeting and thereafter, or the applicant's address during that period.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

Although the applicant has submitted numerous affidavits in support of his application, the applicant has not provided sufficient documentary evidence of residence in the United States for the duration of the requisite period. 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. None of the affiants indicated how they dated their acquaintance with the applicant or how frequently they saw the applicant after their first encounter. 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.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 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.

Although the applicant submits a photocopy of a lease agreement, this document is not credible. As noted by the director, the lease is dated 1982, but the term of the lease does not commence until January 1, 1985. The director also noted discrepancies with the address, as well as the omission of the lessor. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

On appeal, counsel asserts that the director made numerous mistakes in the assessment of the evidence. For example, he claims that the illegible affidavit of [REDACTED] cannot form the basis for the denial when there were several other affidavits submitted. As stated above, all affidavits have been evaluated and deemed insufficient. Counsel further claims that the applicant does not have a copy of the lease agreement discussed above, and is therefore unable to address the stated deficiencies in the document. In support of the appeal, the AAO notes that one new affidavit, and photocopies of previously-submitted affidavits, are presented in support of the appeal. The new affidavit, dated May 18, 2005 by Iqbal Abdullah, claims that the affiant has known the applicant since 1981, and that he has frequently invited the applicant and other acquaintances over to dinner. For the reasons discussed above, the AAO finds this affidavit insufficient to support a finding that the applicant has maintained continual unlawful residence in the United States, for it omits critical information such as the basis for the affiant's relationship with the applicant and the applicant's periods of residence in the United States.

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.