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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 099 61365

Office: NEW YORK

Date:

NOV 04 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Director, New York, New York. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is no longer authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

On appeal, the applicant submits a brief statement and additional documentation.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. See 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, should: 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 the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on January 7, 2002. On July 13, 2007, the director denied the application. The applicant filed a timely appeal from that decision on July 30, 2007.

The issue in this proceeding is whether the applicant has established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

The record reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

Applicant's Affidavits

1. An affidavit, dated October 4, 1991, from the applicant stating that he entered the United States on April 2, 1981, and resided continuously in the United States until his departure to Bangladesh on September 20, 1984, where he remained until re-entering the United States on October 25, 1984.

2. An affidavit, dated June 22, 2007, from the applicant stating, in part, that he entered the United States without inspection on April 2, 1981, and has submitted evidence to establish that he continuously resided in unlawful status since that date through May 4, 1988.

Affidavits from Acquaintances

3. Similar fill-in-the-blank affidavits, dated January 8, 1993, from [REDACTED] of New York, New York, stating that the applicant resided at [REDACTED] since October 1981. Mr. [REDACTED] states that he and the applicant went shopping and to religious functions together and attended a Mosque for prayer, and [REDACTED] states that the applicant was a neighbor and they became friends.
4. An affidavit, dated July 11, 1994, from [REDACTED] of Toronto, Canada, stating that the applicant arrived in Montreal from the United States on July 5, 1987, stayed with him in Toronto until July 31, 1987, and returned to New York on August 1, 1987.
5. An affidavit, dated July 26, 2007, from [REDACTED] stating that he has known the applicant since November 1981 when the applicant resided at [REDACTED] and that they have been in frequent contact since that date.

Rent/Residence Affidavits

6. An affidavit, dated September 9, 1991, from [REDACTED] stating that he is the owner/leasee of property located at [REDACTED] Brooklyn, New York, and that the applicant had been his tenant from April 1981 to September 1983, paying a monthly rent of \$70.00.
7. An affidavit, dated October 10, 1991, from [REDACTED], stating that he is the owner of an apartment located at [REDACTED] New York, New York, and that the applicant lived with him from March 1985 to December 1990. In a second letter, dated February 10, 1993, [REDACTED] states that the applicant had lived with him since October 1981.
8. An affidavit, dated October 11, 1991, from [REDACTED]; a tenant at [REDACTED] stating that the applicant resided with him from October 1983 to February 1985.

Employment Letters/Affidavits

9. A letter, dated June 25, 1990, from [REDACTED] of Robe Films Production in Brooklyn, New York, stating that the applicant was employed as a cleaner from November 1981 to November 1983, was paid in cash, and did not have a Social Security number.
10. An affidavit, dated October 10, 1991, and February 8, 1993, from [REDACTED] owner of [REDACTED] in New York, New York, stating that the applicant was employed as a counter person from December 1983 to March 1985.
11. An affidavit, dated February 16, 1993, from the manager of Gandhi Restaurants in New York, New York, stating that the applicant was employed as a busboy from April 1985 to December 1990.

Other Documentation

12. A letter, dated February 5, 2004, from [REDACTED] President of the Beanibazar Social & Cultural Society (USA), Inc. in Ozone Park, New York, stating that the applicant had been a member of the club since 1987.
13. A letter, dated February 23, 2004, from [REDACTED] of New York, New York, stating that the applicant was a patient on May 18, 1987.

As stated above, to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony (see Nos. 1 and 2, above). [REDACTED] (No. 3) attest to the applicant having resided at [REDACTED] New York, from October/November 1981, until the date of signing their affidavits in January 1983. However, [REDACTED] (No. 6) states that the applicant was a tenant at [REDACTED] Brooklyn, New York, from April 1981 to September 1983; [REDACTED] states that the applicant was a tenant at [REDACTED] New York, from October 1981 to February 1993, as well as from March 1985 until December 1990; and, [REDACTED] states that the applicant resided with him at yet another address, [REDACTED] New York, New York, for much of the same time period – October 1983 to February 1985.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

The employment letters provided in Nos. 9, 10, and 11, do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to 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. Furthermore, the documentation provided by [REDACTED] (No. 4) merely attests to the applicant having visited him in Canada in 1987; [REDACTED] (No. 12) merely attests to the applicant's presence in the United States from 1987 to 2004; and, [REDACTED] (No. 13) merely attests to the applicant's presence in the United States on a specific date in May 1987.

In summary, for the duration of the requisite time period, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no church attestations that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v)(A) through (G). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security or Selective Service card, automobile license receipts, deeds, tax receipts, insurance policies or other similar documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of his own statements and third-party affidavits ("other relevant documentation"). These documents contain inconsistencies and lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

It is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.