

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE:

MSC 02 046 60674

Office: PHILADELPHIA

Date:

OCT 28 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. All documents have been returned to the National Benefits Center. If your appeal was sustained, or if your case 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 "R. 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, Philadelphia, Pennsylvania. The decision 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 asserts that he has submitted sufficient evidence to establish his eligibility under the LIFE Act. The applicant does not submit additional evidence on appeal.

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), dated July 24, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director noted that the applicant's testimony during an August 19, 2005 interview, wherein he stated that he first entered the United States in July 1980, contradicted his testimony at a second interview on July 19, 2006, wherein he stated that he first entered the United States in January 1981. The director also noted that the applicant's testimony pertaining to his residences, and employment, from 1981 to 1990, conflicted with the information he had provided on his Form I-687. The director granted the applicant thirty (30) days to submit additional evidence.

In response to the NOID, the applicant submitted a letter stating that during his interview on July 19, 2006, he "was very unmindful and upset" because three days earlier his wife had been sick, and because of his mental anxiety he had lost his memory; however, he regained his memory when he returned from vacation in New York. The applicant states further that he recalls that he first came to the United States on July 2, 1980, with a visitor's visa; he resided at [REDACTED]

Brooklyn, New York 11216, from July 1980 to September 1987, and at [REDACTED] Brooklyn, NY 11210, from October 1987 to November 1990; and, he worked at King Fischer Coffee Shop from August 1980 to May 1985, and at [REDACTED] Construction from June 1985 to October 1990. No additional evidence was submitted.

In the Notice of Decision, dated August 8, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, however, the information submitted was insufficient to overcome the reasons for denial as stated in the NOID. Again, the director noted various discrepancies between the applicant's testimony during his two interviews, and information he had provided on his Form I-687.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate his continuous residence in the United States in an unlawful status, and his physical

presence, 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 submits a letter of employment, three affidavits, receipts, a prescription, and envelopes, as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Employment Letter

The applicant submitted a letter of employment, notarized on September 5, 1991, from [REDACTED], of [REDACTED] Construction, located at [REDACTED] Brooklyn, N.Y. 11216, stating that the applicant was employed from June 1985 to October 1990, at a daily rate of \$45.00, and was paid in cash. However, Mr. [REDACTED] does not indicate a date when the claimed employment commenced, and the capacity in which the applicant was employed. Also, Mr. [REDACTED] 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).

Affidavits & Letters

The applicant submitted the following:

1. An affidavit from [REDACTED] notarized on August 21, 1991. Mr. [REDACTED] states that he has known the applicant since July 1980; that the applicant lived in his basement apartment in his building located at [REDACTED], Brooklyn, N.Y. 11216, from July 1980 to September 1987, and worked as a Super, therefore, he did not pay rent; and, the applicant resided at [REDACTED], Brooklyn N.Y 11216 from October 1987 to November 1990. The affiant also states that since 1981 he saw the applicant "almost every now and then." However, the affiant does not indicate whether and how he maintained contact with the applicant from October 1987.
2. An affidavit from [REDACTED], notarized on September 5, 1991. Mr. [REDACTED] states that the applicant was his co-tenant at an apartment, located at [REDACTED] Brooklyn, N.Y. 11216, from October 1987 to November 1990.
3. An affidavit from [REDACTED] notarized on September 5, 1991. Mr. [REDACTED] states that he has known the applicant to have resided in the United States since February 1981. Mr. [REDACTED] also states that 9 months was the longest period that he did not see the applicant. The affiant, however, does not specify during what period he did not see the applicant. Also, the affiant does not indicate whether and how he maintained contact with the applicant.

In addition, the applicant submitted:

1. An unclear handwritten passenger ticket and baggage check, issued by Biman Bangladesh Airlines;
2. Three receipts from [REDACTED], dated September 9, 1982, October 24, 1985, and September 12, 1986, respectively;
3. A receipt from NEENA, located at Willow Grove Park, Willow Grove, PA, dated March 10, 1983;
4. A prescription, dated November 22, 1982, from [REDACTED] M.D, of Walk In Medical Center, located at [REDACTED], Cambria Heights, N.Y. 11411; and,
5. Four mail envelopes addressed to the applicant at [REDACTED], Brooklyn, N.Y. 11216, date-stamped with unclear dates in 1980, 1982, 1984, and 1986, respectively.

The applicant has submitted a letter of employment, three affidavits, a prescription, receipts, and envelopes in support of his application. However, the applicant has provided questionable documentation. The receipt from NEENA appears to have been altered. Specifically, the date on the receipt appears to have been altered to read March 10, 1983. Also, the applicant submitted a prescription from [REDACTED] M.D, of Walk In Medical Center which has an issue date of November 22, 1982, and indicates a telephone number ([REDACTED]). However, the prescription is fraudulent because it shows an address in Cambria Heights, New York, and a telephone number with a "718" area code. However, the "718" area code did not exist until September 1984.

It is also noted that the applicant stated that in August 1985 he had departed the United States for Bangladesh to visit his family, and returned to the United States in September 1985 with a B-2 visitor's visa; and, he again departed the United States in March 1989 to visit his family in Bangladesh, and returned with a D-1 seaman's visa. In order to receive these visas the applicant would have had to convince a consular officer and substantiate that he had resided in Bangladesh. The applicant claims that he has been residing in the United States in an unlawful status since prior to January 1, 1982; however, he does not explain how he obtained either of these visas. It is noted that the applicant's passport which was issued in New York, on February 1991, indicates that he had traveled on a previously issued passport that had been issued in 1980, and which he claimed had been lost/damaged. However, there is no indication as to when that passport had been lost/damaged.

In addition, the applicant has submitted a questionable affidavit. The affidavit from [REDACTED] states that the applicant was employed as a Super, from July 1980 to September 1987, at his apartment building in Brooklyn. However, the applicant does not indicate any such

employment in his application or on his Form I-687. This casts doubts on the applicant's claimed residence from July 1980 to September 1987.

The above discrepancies cast considerable doubt on whether the applicant resided in the United States from 1981 as he claimed. 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.

In addition, 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 frequently they saw the applicant. It is also noted the applicant has not provided any reliable documents, such as school, medical, or tax records. 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.