

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, D.C. 20529-2090

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

L2



FILE:

MSC 02 241 62536

Office: GARDEN CITY

Date: OCT 29 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, National Benefits Center, and reopened on Service motion. The application was subsequently denied by the Director, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel puts forth a brief disputing the director's findings.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

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.

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 applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- A notarized affidavit from [REDACTED] of Toronto, Canada, who attested to the applicant's visit at his residence in Ontario, Canada from June 25, 1987 to July 30, 1987.
- A PS Form 3806, Receipt for Registered Mail, postmarked August 8, 1982.
- Several envelopes with indecipherable postmarks.
- A letter dated January 17, 1993, from [REDACTED] of The Islamic Council of America, Inc. in New York, New York, who indicated that the applicant was personally known to him "since long as he used to come to this Mosque...."
- A letter dated February 1, 1992, from [REDACTED], secretary of Bangladesh Society, Inc, in Jamaica, Queens, who indicated that the applicant had been an active member from November 1983 to December 1991.
- A letter dated February 23, 1983 from [REDACTED], University Director of Admissions of Pace University in New York, New York. The letter indicated, in pertinent part: "Thank you for your application to Pace University for the Fall 1983. However, your application is incomplete as of this date and Fall classes have begun. We would be happy to consider your application for the Spring 1983 semester." The letter further advised the applicant that if he would like his application to be considered he should complete the reactivation form and return it to the university before March 15, 1983.
- Notarized affidavits from [REDACTED] of Brooklyn, New York, who asserted that he met the applicant in Central Park in 1981 and that the applicant has been residing with him at [REDACTED] Brooklyn, New York from May 1981 to June 1985 and at [REDACTED], Corona, Queens, New York from July 1985 to August 1989. The affiant asserted that the rent receipts and household bills were in his name.
- A letter dated August 14, 1985, from [REDACTED], manager of Beacon Baths & Health Clubs, Inc, in New York, New York, who indicated that the applicant was employed as a cleaner from November 1981 to July 1985.

On June 20, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the envelopes submitted had indecipherable postmarks, the affiants did not demonstrate how they had personal knowledge of the events being attested and Citizenship and Immigration Services (CIS) attempted to contact [REDACTED] at the telephone number listed on her letter, but no one answered and the Service officer was not able to leave a message. In addition, the telephone directory did not have a listing for Beacon Bathes & Health Club, Inc.

The director also advised the applicant that the letter from Pace University listing his address as [REDACTED] Brooklyn, New York contradicted the information provided on his Form I-687 application. The applicant claimed on his Form I-687 application to have resided at [REDACTED] Brooklyn, New York during this period. The applicant failed to mention that he resided at [REDACTED], at the time of his LIFE interview.

The applicant was advised that these discrepancies called into question the veracity of his claim of continuous residence in the United States during the requisite period.

The applicant, in response, asserted that at the time of his 1981 illegal entry into the United States, his passport and all other documents were taken by a broker. The applicant asserted that the address listed on the letter from Pace University belonged to a friend, which he occasionally used as a mailing address. The applicant provided:

- A notarized affidavit from [REDACTED] of Long Island City, New York, who indicated that the applicant is a childhood friend whom he has known since 1970. The affiant attested to the applicant's residence at [REDACTED], Brooklyn, New York from 1981 to 1985, and at [REDACTED] Corona, Queens, New York from 1985 to 1989 and to the applicant's absence in 1987 to Canada. The affiant asserted that he had maintained his friendship with the applicant in the United States since 1981.
- A letter dated July 9, 2007, from [REDACTED], general secretary of Bangladesh Society Inc., in Elmhurst, New York, who indicated that the applicant has been a member in good standing since 1983.
- A death certificate issued on January 23, 2006 for [REDACTED]

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel asserts that all the documents submitted throughout the application process were not considered and, therefore, "the denial demands judicial review and further consideration." Counsel argues that the director failed to explain why the original documents were not considered favorable to the applicant.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

Abdul Ghani attested to the applicant's residence in the United States during the requisite period, but fails to provide any details regarding the nature of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence. 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.

As the envelopes have indecipherable postmarks they cannot serve as evidence to establish the applicant's physical presence and continuous residence in the United States during the requisite period.

The letters from Bangladesh Society, Inc., New York, have little probative value as the applicant did not indicate on his Form I-687 application that he was affiliated with this organization during the requisite period. Further, the letters have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiants do not explain the origin of the information to which they attest.

The letter from [REDACTED] was dated August 14, 1985; however it contains a notarized date of February 24, 1993 and, therefore, raises questions to its credibility. It is unclear why the applicant would keep an employment letter dated in 1985, but no documentation for his employment from December 1985 to April 1992 at Villagar Farms Deli. In addition, the letter from [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).

The letter from Pace University raises questions as to its authenticity as the letter was written during the 1983 Spring semester and, therefore, "Fall 1983" classes would not have been in session. In addition, it is not clear why the university would have suggested that an individual complete a reactivation form by March 15, 1983 as the Spring semester would have been halfway completed.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

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). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.