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U.S. Citizenship
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Services

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FILE: MSC 02 183 64670

Office: GARDEN CITY

Date: OCT 31 2008

IN RE: Applicant:



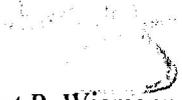
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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.


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, Garden City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant contends that he did respond to the director's Notice of Intent, dated October 5, 2006. He asserts that he mailed evidence but it was not received within the allotted time. He provides copies of the previously submitted evidence and requests that his application be reconsidered. He also asserts that he will send a brief and/or evidence to the AAO within 30 days. As of the date of this decision, no brief or evidence was submitted. Therefore, the record will be considered complete.

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 must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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.* at 80. 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 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). 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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant’s claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

On April 1, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). In connection with his application, the applicant was interviewed on August 30, 2006. During his interview, the applicant claimed to have entered the United States from Canada in September 1981. However, the applicant failed to submit any evidence of his entry. In addition, the record contains a Form I-687, Application for Status as a Temporary Resident, signed by the applicant on March 15, 1991. In his Form I-687, the applicant stated that he last came to the United States in October 1981. Moreover, in connection with his Form I-687, the applicant completed an affidavit of circumstances in which he stated his date of entry was on October 25, 1981. These discrepancies cast doubt on the veracity of his claim.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistencies.

In support of his claim of continuous residence, the record includes the following evidence relevant to the requisite period:

1. Two declarations from [REDACTED] and [REDACTED]. Mr. [REDACTED] stated that he met the applicant "between the years 1982 and 1994" in Chattanooga, Tennessee. He indicated that the applicant was passing through the city in route to a festival in Colorado. Mr. [REDACTED] stated that he met the applicant in 1982 at a music festival at Central Park, New York. He indicated that the applicant performed and taught about African culture and dance. Both affiants failed to provide details regarding their claimed friendships with the applicant or to provide any information that would indicate personal knowledge of the applicant's places of residence or the circumstances of his residence over the years of their claimed relationships. Lacking relevant details, these affidavits have minimal probative value.
2. A form affidavit, dated March 12, 2002, from [REDACTED] who stated that he has personally known the applicant in New York from December 1981 to the present. The affiant stated that he met the applicant in a coffee shop in December 1981 in New York City. The affiant failed to provide details regarding his claimed relationship with the applicant given their twenty or so years of claimed friendship. Lacking relevant details, this affidavit has minimal probative value.
3. An affidavit, dated March 13, 2002, from [REDACTED] who stated that he has known the applicant since December 1981. The affiant stated that they are close friends and visit each other on a regular basis. The affiant failed to provide details regarding his claimed friendship with the applicant or to provide any information that would indicate personal knowledge of the applicant's places of residence or the circumstances of his residence over the prior twenty or so years of their claimed relationship. Although he claims to have known the applicant since 1981, he failed to note how or where he met him. Lacking relevant details, this affidavit has minimal probative value.
4. An affidavit, dated November 12, 1990, from [REDACTED], manager at Patisserie Dumas, who stated that the applicant has been employed as a stockperson since November 1981. By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant's address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer's willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). This affidavit does not meet these regulatory standards. It does not include the applicant's address at the time of employment, whether the information was taken from official company records, or where the records are located and whether CIS may have access to the records. In addition, the applicant did not indicate employment with this company in his Form I-687. The lack of relevant details and omission of this employment on his Form I-687 cast doubt on the credibility of the applicant's claim.

5. A declaration, dated February 8, 1990, from Laye Thiam, the applicant's brother, who stated the applicant visited him in Canada from September 7, 1987, to October 12, 1987. The declarant stated that after the visit the applicant returned to his home in New York. The declarant also provided an updated declaration, dated October 2, 1991, affirming his previous declaration. The declarant also provided details regarding the applicant's trip to Canada, stating that they arrived in Montreal on September 4, 1987, and stayed through October 5, 1987. There is a discrepancy in the dates between his two declarations. This discrepancy casts doubt on the credibility of the affiant's claim. As such, these declarations will be given only minimal probative value.
6. A form affidavit, dated May 28, 1991, from [REDACTED], who stated that he has personal knowledge that the applicant resided in the United States from October 1981 through the present. The affiant affirmed his previous affidavit, dated October 1, 1990. He also stated that the applicant was a salesman and he met the applicant at his girlfriend's birthday party in Queens. The affiant failed to provide details regarding his claimed relationship with the applicant given their 9 or 10 years of claimed friendship. Lacking relevant details, these affidavits have minimal probative value.
7. An affidavit, dated May 28, 1991, from [REDACTED], who stated that he has personal knowledge that the applicant resided in New York from October 1981 through the present. This affiant affirmed his previous affidavit dated September 9, 1990. He also stated that he the applicant was a salesman at his club's annual dance. The affiant failed to provide details regarding his claimed relationship with the applicant given their 9 or 10 years of claimed friendship. Lacking relevant details, these affidavits have minimal probative value.
8. An affidavit, dated October 4, 1990, from [REDACTED] of Masjid Malcolm Shabazz, who stated that the applicant has been a member of the Muslim community since October 1981. It is noted that the director determined this affidavit to be fraudulent. In addition, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: 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 membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to. Here, the affiant has failed to state the address where the applicant resided during the membership period and to establish the origin of the information being attested to. Thus, this affidavit cannot be given any weight as evidence of the applicant's residence in the United States during the requisite period.
9. The record also contains two affidavits with illegible signatures. The first affidavit indicates that the applicant resided at the [REDACTED], located at [REDACTED], from October 1981 through June 1986. The second affidavit indicates that the applicant resided at the [REDACTED], located at [REDACTED] from June 1986 to June 1989. It is noted that the director determined these affidavits to be unverifiable and fraudulent. As such,

they can be given no weight as evidence of the applicant's residence in the United States during the requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The discrepancies in the applicant's own testimony also detract from his claim. The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period.

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 lack of credible supporting documentation and the inconsistencies noted in the record, 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 from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.