



U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: SEP 12 2008

MSC 02 046 61011

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

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.

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, New York, New York, 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 had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant reiterated his claim of residence in this country since 1981 and asserted that he had submitted sufficient documentation in support of such claim. The applicant indicated that he did not possess any further evidence of his residence in the United States since 1981 because of the significant passage of time.

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 and through May 4, 1988. Section 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 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 "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. *Id.*

Even if the director has some doubt as to the truth, if the petitioner 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on August 24, 1991. At part #33 of the Form I-687 application, where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] New York from August 1981 to December 1986 and [REDACTED] New York from January 1987 to December 1990. In addition, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant indicated that he was employed as a construction laborer for both [REDACTED] in New York, New York from August 1981 to May 1987 and Style Painting and Home Improvement Inc., in Brooklyn, New York from August 1987 through the date the Form I-687 application was filed on August 24, 1991.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted four original postmarked envelopes. However, three of these four envelopes are postmarked with dates occurring after the termination of the requisite period on May 4, 1988, and therefore, cannot be considered as probative of his claimed residence in the United States from prior to January 1, 1982 to May 4, 1988. The remaining envelope is postmarked April 7, 1982, contains two Bangladeshi postage stamps, and was purportedly mailed to the applicant from Bangladesh at the address he claimed to have resided on this date.

The applicant provided a declaration dated April 30, 1991 that is signed by [REDACTED] [REDACTED] listed the applicant’s address as of the date the declaration was executed and stated that the applicant visited him in Montreal, Canada from June 20, 1987 to July 21, 1987. However, [REDACTED] failed to provide any testimony relating to the applicant’s residence in the United States during the requisite period.

The applicant included an affidavit signed by [REDACTED] who stated that he was the applicant's roommate at that same street address listed by the applicant as his residence at part #33 of the Form I-687 application from January 1987 to December 1990. Nevertheless, Mr. [REDACTED] failed to attest to the applicant residence in this country from prior to January 1, 1982 up to January 1987.

The applicant submitted an affidavit that is signed by [REDACTED] indicated that the applicant resided with him as a roommate at [REDACTED] Brooklyn, New York from August 1, 1981 through December 30, 1986. However, Mr. [REDACTED] failed to provide any testimony regarding the applicant's residence in the United States after December 30, 1986 through May 4, 1988.

The applicant submitted an employment letter containing the letterhead of [REDACTED] New York that is signed by [REDACTED] noted that he employed the applicant as a construction worker from August 20, 1981 to May 25, 1987 and that he had been paid in cash during this period. However, [REDACTED] failed to provide the applicant's address at the time of he employed the applicant as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, [REDACTED] failed to attest to the applicant's residence in the United States after May 25, 1987 through May 4, 1988.

The applicant provided an employment letter dated May 20, 1991 containing the letterhead of Style Painting & Home Improvement, Inc., at [REDACTED] New York that is signed by [REDACTED] who listed his position as president of this enterprise. It is noted that this individual appears to be the same person whose name was listed as [REDACTED] in the affidavit discussed above as the signatures on the affidavit and employment letter match despite the difference in the spelling of the two names. [REDACTED] declared that the applicant worked for this enterprise from August 1987 through the date the letter was executed and that the applicant had been paid in cash during this period. [REDACTED] failed to provide the applicant's address at the time of his employment and did not state the applicant's duties at this establishment as required by 8 C.F.R. § 245a.2(d)(3)(i). In addition, [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 until August 1987.

Subsequently, on November 15, 2001, the applicant filed his Form I-485 LIFE Act application. The applicant included new as well as previously submitted documentation in support of his claim of residence in the United States for the requisite period with the Form I-485 LIFE Act application.

The applicant included an affidavit signed by [REDACTED] who provided a listing of the applicant's addresses of residence for the period in question that matched those addresses listed by the applicant at part #33 of the Form I-687 application. [REDACTED] stated that he was able to determine the date of his acquaintance with the applicant because he was the applicant's friend.

The applicant provided an affidavit that is signed by [REDACTED] declared that he was the applicant's cousin and provided a listing of the applicant's addresses of residence for the period in question that corresponded to those addresses listed by the applicant at part #33 of the Form I-687 application. However, the probative value of [REDACTED] is limited by the fact that he has acknowledged that he is a member of the applicant's family with a direct interest in the outcome of these proceedings rather than an independent and disinterested third party witness.

On August 10, 2007, the district director issued a notice of intent to deny the application to the applicant for failure to submit sufficient evidence of his continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. In addition, the district director stated that the applicant had provided testimony at his interview on March 2, 2004 in which he described both his manner of initial entry into this country at Miami, Florida in 1981 and a subsequent trip to Canada in 1987 without offering any evidence relating to either event. However, the district director failed to acknowledge that the applicant did submit a declaration signed by [REDACTED] who provided testimony regarding the applicant's trip to Canada in 1987. While the applicant did not submit any evidence of his manner of initial entry into the United States in August 1981, it cannot be expected that the applicant would have proof that he was smuggled into this country via a fishing boat that traveled from the Bahamas and landed at Miami, Florida as he claimed. The district director also noted that the applicant had testified that he had lived with a friend in Brooklyn, New York without being able to recall the name of the friend or the address of this residence. The district director declared that the applicant had also testified he visited friends when he traveled to Canada in 1987 but was unable to recall the names of such friends. Nevertheless, the notes of the CIS officer who conducted the applicant's interview on March 2, 2004 do not contain any notation reflecting that the applicant was asked to name friends with whom he had resided, addresses of residence, or names of friends he had visited in Canada in 1987 much less that he was unable to recall these items. Finally, the district director inferred that the applicant's claim that he began residing in this country was less than credible because he was in Bangladesh for the birth of his second child on [REDACTED] as well as the conception of his third child subsequently born on [REDACTED]. However, it readily apparent and recognizable that a full-term baby born in [REDACTED] was conceived on or about a date in July of 1981 and reasonable to assume the applicant was present in Bangladesh for the conception of his third child prior to his claimed entry into the United States in August 1981. Regardless, the district director's conclusions regarding the effect of testimony provided by the applicant must be considered as harmless error as 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.12(f). The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which he indicated that any failure on his part to recall specific details at his interview relating to his residence in this country during the requisite period was the result of a faulty recollection after so many years had passed. The applicant also

asserted that this significant passage of time was the reason for his failure to produce additional evidence of his residence in the United States for the period in question.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on August 1, 2007.

On appeal, the applicant reiterated his claim of residence in this country since 1981 and asserted that he had submitted sufficient documentation in support of such claim. The applicant again noted the difficulty in obtaining documentation in support of such claim in light of the significant passage of time. However, the supporting documents contained in the record lack specific detail and verifiable information to substantiate the applicant's claim of residence in the United States for the period in question.

As previously discussed, the applicant submitted an original envelope postmarked April 7, 1982 with the Form I-687 application filed on August 24, 1991. This envelope contains Bangladeshi postage stamps and was purportedly mailed to the applicant from Bangladesh at the address he claimed to have resided on the date of the postmark. A review of the *2006 Scott Standard Postage Stamp Catalogue* Volume 1 (Scott Publishing Company 2005) reveals the following:

- The envelope bears a postage stamp with a value of two takas that depicts the terminal at Zia International Airport. This stamp is listed at page 661 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 242 A70. The envelope also bears another postage stamp with a value of five takas that depicts the Khulna Post Office. This stamp is also listed at page 661 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number [REDACTED]. The catalogue lists both of these stamps' date of issue as December 21, 1983.

The fact that an envelope postmarked April 7, 1982 bear stamps that were not issued until well after the date of this postmark establishes that the applicant utilized this document in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. By engaging in such an action, the applicant has seriously undermined his own credibility as well as the credibility of his claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988.

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 visa petition. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The above derogatory information indicates that the applicant made material

misrepresentations in asserting his claim of residence in the United States for the period in question and thus casts doubt on his eligibility for adjustment to permanent residence under the provisions of the LIFE Act.

The AAO issued a notice to the applicant and his attorney on July 15, 2008 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he utilized the postmarked envelope cited above in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. The applicant was granted fifteen days to provide evidence to overcome, fully and persuasively, these findings.

In response the applicant submits a statement in which he reaffirms his claim of residence in this country since prior to January 1, 1982 and asserts that he had no knowledge of or any part in the creation of the falsified envelope. The applicant indicates that he was assisted in the preparation of his application and supporting documents but acknowledges that he is the one who is ultimately responsible for the truth and veracity of these documents.

The existence of derogatory information that establishes the applicant used a postmarked envelope in a fraudulent manner and made material misrepresentations seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no 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 as required under section 1104(c)(2)(B) of the LIFE Act. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documents, we affirm our finding of fraud. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

ORDER: The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.