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FILE: [REDACTED]
MSC 02 235 61642

Office: NEW YORK (GARDEN CITY)

Date: SEP 22 2008

IN RE: Applicant: [REDACTED]

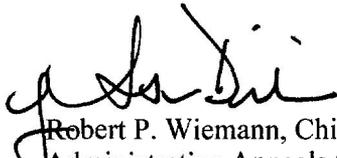
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 District Director, 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 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 the director did not give sufficient weight to the submitted evidence. He asserts that he submitted a plethora of substantial evidence that would warrant an approval of his application. He also contends that the director should have taken into account the passage of time between the statutory period and the time of application.

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.13(f).

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case the applicant applied for such class membership by submitting a “Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit],” dated January 6, 1991, accompanied by his Form I-687 “Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act).” On May 23, 2002 the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application).

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.

The record contains the following evidence relating to the statutory period:

1. An affidavit, dated April 26, 2004, from [REDACTED] who stated that she has known the applicant since the summer of 1982. She stated that she met him while he was selling garments on the street in Harlem where she lived, he has established himself as an expert tailor, and he has dined at her home on numerous occasions. The affiant failed to provide detailed information that would indicate personal knowledge of the applicant’s places of residence in the United States or the circumstances of his residence over the prior twelve years of their claimed relationships. Because the affidavit is lacking in relevant detail, it lacks probative value and has only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

2. An undated declaration from [REDACTED] who stated that he arranged for a ticket for the applicant during his trip to Senegal in 1987. The statement is consistent with the applicant's claim in his Form I-687 that he visited Senegal from December 1987 to January 1988. This declaration, while confirming the applicant's absence in 1987, has limited relevance as evidence of his residence in the United States during the requisite period. In addition, the declaration is not amenable to verification.
3. A declaration, dated November 12, 1990, from [REDACTED]. [REDACTED] The declarant stated that the applicant is a member of the Muslim community, has been here since October 1981, and attends prayer services at the Masjid. The declarant failed to state the address where the applicant resided during membership period, establish how the author knows the applicant, and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The declaration provides minimal probative value.
4. Two form affidavits from [REDACTED] both dated April 17, 1991. [REDACTED] stated that she has personal knowledge that the applicant has resided in the United States since April 1981 and is a good person of moral character. [REDACTED] stated that she has personal knowledge that the applicant has resided in the United States since November 1981 and is a good friend of hers. The 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 1981 entry to the United States, his places of residence or the circumstances of his residence over the prior nine or ten years of their claimed relationships. Although they claimed to have known the applicant since 1981, they failed to note how or where they met him. Lacking relevant details, these affidavits have minimal probative value.
5. Two declarations of employment from [REDACTED] Mr. [REDACTED] owner of Petrina Enterprises Ltd, stated that the applicant has been employed with the company from October 1984 to March 1986 as an "aid cook." He also stated that applicant's earnings at the start and end of his employment. [REDACTED] personnel at Bay Sales Co., stated that the applicant has been employed with the company from April 1986 to the present as a stock person. He also stated the applicant's weekly earnings. 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). Neither declaration meets these regulatory standards. They do not provide the applicant's address at the time of employment. Nor do they offer to either produce official company records or to testify regarding unavailable records. These declarations can be accorded only minimal weight as evidence of residence 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. Although the applicant claims to have submitted a plethora of evidence, all seven of the affidavits/declarations in the record that refer to the relevant years are bereft of sufficient detail to be found credible or probative. Not one affiant/declarant indicates credible personal knowledge of the applicant's entry into the United States in 1981 or credibly attests to his presence in the United States from his 1981 entry to 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in March 1981 without inspection and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

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, 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.