



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 307 60465

Office: NEW YORK

Date:

SEP 26 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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: On September 8, 2005, the District Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). On May 8, 2008, the application was remanded to the director for the issuance of a new Notice of Intent to Deny (NOID) and a new final decision. On July 16, 2008, the director again denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit sufficient documents to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988. The director noted that the applicant's passport indicated that he traveled to the United States in transit to Thailand in 1981 and did not take up residence here at that time.

On appeal, counsel for the applicant asserts that the passport stamps were misread and that the applicant entered the United States on July 17, 1981.

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. 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 period, 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 states 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 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 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). See 8 C.F.R. § 245a.15(b). 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). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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.

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 record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," filed on May 20, 1991.

On August 3, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On July 12, 2004, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden, establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon 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 applicant has provided the following evidence relating to the requisite period:

Letters and affidavits

- An affidavit notarized on July 10, 2004, from [REDACTED] asserts that he has known the applicant since 1981. He states that applicant's date of birth and current address. He asserts that he and the applicant met each other every Sunday at Sikh Center of New York in Flushing, New York, from December

1981 to 1984 to perform religious prayers. He asserts that the applicant cooked in the center's kitchen for the people who went to pray in the center. [REDACTED] does not provide any details that would indicate personal knowledge of the circumstances of the applicant's entry into the United States, his departures from the United States, or where the applicant lived throughout the statutory period. Thus, the letter can be given minimal evidentiary weight as evidence of his continuous residence in the United States throughout the requisite period;

- A letter from [REDACTED]. This letter is not dated and is not notarized. Mr. [REDACTED] attests that the applicant worked for him as a part time helper in shipping, packing, repacking, and stacking goods from August 1981 to June 1983. He states that the applicant was paid \$4 per hour. He states that the applicant is a very hard worker and an honest person. This letter can be given little evidentiary weight because it lacks sufficient detail and information required by the regulations. Specifically, the employer failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employer also failed to declare which records his information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable;
- A letter notarized on June 26, 1990, from [REDACTED] asserts that the applicant shared an apartment with him from May 1985 to September 1989. He states that the apartment was located at [REDACTED]. Although this address is consistent with the address listed on the applicant's Form I-687, this letter can be given minimal weight as evidence of the applicant's continuous residence in the United States. [REDACTED] provides minimal details about his personal knowledge of the applicant's residence apart from the address where he lived from May 1985 to September 1989. [REDACTED] does not explain how, when, or where he met the applicant;
- A letter from [REDACTED]. The letter is not dated and contains a notary public stamp but no date of notarization. [REDACTED] states that he has known the applicant since 1981 and that they used to meet at Sikh Temple on weekends and at Sikh festivals. He states that they used to enhance their knowledge of Sikhism by exchanging their views on religion. Although [REDACTED] states that he has known the applicant since 1981, he does not claim any personal knowledge of the applicant's initial entry into the United States and provides little information that would indicate personal knowledge of the applicant's places of residence or the circumstances of his residence over the 27 years of their claimed relationship.

- A letter notarized on May 29, 1990, from [REDACTED] states that the applicant lived in her house located at [REDACTED] New York, from July 1981 to June 1983. As the applicant's landlord, [REDACTED] fails to submit corroborating evidence of the applicant's residence in her home, such as a lease or rent receipts, or in the alternative, an explanation of the payment arrangements that existed for the applicant. Because this letter is significantly 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;
- An affidavit from [REDACTED]: This affidavit is not dated and contains a notary stamp but no date on which it was notarized. [REDACTED] attests that he has known the applicant since 1983 and that he knows personally that the applicant has been living in the United States since 1983 because they worked together. He provides the address where he was living in 1983 and states that the applicant was living at [REDACTED] 1983. Mr. [REDACTED] does not indicate personal knowledge of the applicant's entry into the United States, and does not explain how, where or when he met the applicant. He does not provide details that would indicate personal knowledge of the applicant's place of residence or details about the circumstances of his residence in the United States. Lacking such relevant details, this affidavit can be given minimal weight as evidence of the applicant's continuous residence during the requisite period;
- A letter notarized on July 29, 1990, from [REDACTED] states that he knows the applicant is residing at [REDACTED]. He states that the applicant is a good friend and a religious man. He asserts that they go to temple quite often and that he helps the applicant with his financial needs from time to time. This letter contains minimal details regarding any relationship with the applicant during the requisite period and fails to even state when or where the affiant and the applicant met. The affiant fails to indicate any personal knowledge of the applicant's claimed entry to the United States during that year or of the circumstances of his residence. There is no evidence that the affiant resided in the United States during the requisite period; and,
- An "Affidavit" form dated June 26, 1990. The form, signed by [REDACTED] first allows the applicant to attest to his departure from the United States after May 1987. The affiant's name was then written into the appropriate blank. The form language states that the affiant affirms that he "swears under penalty of perjury that the following facts are true to the best of my knowledge." [REDACTED] added: I certify that [REDACTED] went to Canada in the month of June 1987 and came back in the month of July 1987." This affidavit can be given minimal weight as evidence of the applicant's continuous residence in the United States.

provides no details about his personal knowledge of the applicant's departure. In addition, this affidavit, is only relevant to the applicant's absence in 1987, and has limited relevance as evidence of his residence in the United States during the requisite period.

Notwithstanding the confusion regarding the stamps in the applicant's passport, the applicant has failed to meet his burden of proof establishing that he entered the United States before January 1, 1982, and resided continuously here from before that date through May 4, 1988. For the reasons noted above, these letters and affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in July 1981, and to have resided for the duration of the requisite period in California and New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status 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 applicant's reliance on affidavits, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States 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.