



U.S. Citizenship
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FILE:

MSC 01 286 60197

Office: NEW YORK

Date:

JAN 05 2009

IN RE: Applicant:



APPLICATION:

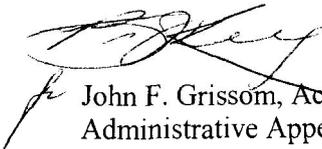
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant states that he has submitted evidence that demonstrates his residence in the United States since 1981. The applicant submits additional evidence on appeal.

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 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.

In the Notice of Intent to Deny (NOID), dated September 21, 2007, the director stated that the applicant had failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant testified at his interview that since his entry he had not departed the United States, however, the applicant had a child born in India in 1985, and there was no evidence that his wife had ever left India. The director determined that the applicant must have been in India in 1985, and therefore, he could not establish his continuous residence throughout the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In his denial notice, dated October 29, 2007, the director denied the application based on the reasons stated in the NOID. The director noted that the applicant failed to respond to the NOID.

On appeal counsel for the applicant asserts that the applicant has submitted sufficient evidence to establish the requisite continuous residence. Counsel also states that the applicant departed the United States on June 20, 1984 for Canada, and his wife traveled to Canada during that period and the couple spent three weeks together. Counsel states further that the applicant neglected to provide information regarding his trip to Canada in his application because the applicant was under the impression that he was required to mention only the trips to India.

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 from prior to January 1, 1982, through May 4, 1988. The record reflects that the applicant submitted numerous affidavits, letters, and other evidence, as evidence to support his Form I-485 application. The AAO has reviewed the entire record as it pertains to the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

Contrary to the applicant's claim that he has submitted sufficient evidence to establish that he has resided in the United States since prior to January 1, 1982, the record indicates that the applicant has submitted questionable documentation.

The applicant has provided two affidavits from _____ dated May 17, 2002, and January 29, 2002, stating that since the applicant came to the United States in April 1991, the

applicant resided with his family at [REDACTED] Gridley, California, until September 1988. [REDACTED] also attests that the applicant resided continuously in the United States except for a brief trip to India in 1987. However, as noted above, the record reflects that the applicant has a child born in India in 1985. This evidence contradicts the applicant's claim that he has resided continuously in the United States since prior to January 1, 1982. At this late stage, the applicant now claims that he neglected to provide information that he had departed the United States on June 20, 1984 for Canada, and his wife traveled to Canada during that period and the couple spent three weeks together, and that he neglected to provide information regarding that trip to Canada in his application because the applicant was under the impression that he was required to mention only the trips to India. The applicant does not provide any documentation, such as travel records, in support of his claim assertion. Without documentary evidence to support the claim, the applicant's assertions will not satisfy the petitioner's burden of proof. The unsupported assertions of the applicant do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, it is noted that the affidavit from [REDACTED] contradicts the applicant's claim as he also attests that the applicant resided continuously in the United States except for a brief trip to India in 1987, and there is no mention whatsoever to the applicant traveling to Canada during the requisite period. It is also noted that on his Form I-485 the applicant does not provide the dates of birth of any of his children. In that the applicant has a child born in India in 1985, which is during the requisite period, it is reasonable to conclude that he would have provided the information pertaining to the child and describe the circumstance surrounding his claimed trip to Canada if he had, in fact, departed the United States for Canada and met his wife in Canada in June – July 1984. The applicant has failed to reconcile these discrepancies. There is no documentation whatsoever to explain how the applicant had been in the United States since June 1981, and be able to father a child who was born in India in 1985. The evidence of record clearly contradicts the applicant's claim that he has continuously resided in the United States since prior to January 1, 1982. The applicant has failed to overcome the evidence of record. This casts considerable doubt on whether the applicant's claim that he has been in the United States since June 1981 is true, and whether the affidavits that the applicant submitted in support of his claimed residence are genuine. The applicant has failed to submit any reliable independent, corroborative, contemporaneous evidence to rebut the contradicting evidence in the record.

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 application. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.