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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 02 219 61138

Office: GARDEN CITY

Date: MAR 23 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:

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.

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, 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. In addition, the director determined that the applicant was inadmissible to the United States pursuant to Section 212(a)(6)(C)(i) of the Immigration and Nationality Act (ACT).

On appeal, the applicant asserts that he entered the United States in March 1981 and has since continuously resided in the United States except for a brief absence from June 1987 to July 1987. He asserts that one of his affiants died in 1996 and provides the contact information for the affiant's son and an organization that the affiant belonged to for credibility purposes. He asserts that some of his affiants are traveling outside Bangladesh and some have moved to other places. No additional evidence was submitted. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

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 petitioner 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).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of attestations from individuals claiming to know the applicant, a disability certificate, and a postmarked envelope. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The witness statements from [REDACTED] and [REDACTED] all contain statements that they have known the applicant for years and that they attest to the applicant being physically present in the United States during the required period. These

affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

It is also noted that the declaration from [REDACTED] is notarized by [REDACTED]. The director confirmed the fraudulent nature of the documents with notary stamps from Louis [REDACTED]. Neither counsel nor the applicant addressed this issue in rebuttal to the director's Notice of Intent to Deny or on appeal. The fact that the applicant submitted documents with fraudulent notarizations seriously casts doubt on the veracity of the applicant's claim.

The two declarations of employment from [REDACTED] and [REDACTED] are of little probative value because they do not conform to the regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). The declarations fail to provide the applicant's address at the time of employment, 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 addition, the declaration from [REDACTED] is notarized by [REDACTED] and will be considered fraudulent.

Upon review, the AAO finds that, individually and together, the as the witness statements lack probative value and credibility, their assertions are probably not true. Therefore, they will be given little weight as evidence in support of the applicant's claim.

The record also contains a disability certificate from a [REDACTED], in the applicant's name, dated May 1982. The director noted that the certificate contains a telephone number with a "718" area code; however, this area code did not come into existence until 1984. Neither counsel nor the applicant addressed this issue in rebuttal to the director's Notice of Intent to Deny or on appeal. This discrepancy casts doubt on the credibility of the applicant's 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 discrepancy.

The record includes a declaration from [REDACTED], who stated that the applicant visited him in Canada from June 5, 1987 to July 8, 1987. The declarant stated that he drove the applicant from New York to Canada and back. This declaration provides minimal probative value and will be given little weight as evidence of the applicant's residence in the United States during the requisite period.

The record contains an envelope addressed to the applicant at his place of residence in the United States from Bangladesh, postmarked in January 1982. While this evidence indicates the applicant's presence in the United States in January 1982, it is insufficient to establish the applicant's residence during the requisite period.

The noted discrepancies in the record and fraudulent notarizations are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, 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. *See Matter of Ho, supra.*

Based upon the foregoing, 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.

Misrepresentation

As the record indicates that the applicant submitted fraudulent documents in support of his application, the issue of misrepresentation must also be addressed.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under BIA precedent, a material misrepresentation is one which “tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.” *Matter of S- and B-C-*, 9 I & N Dec. 436, 447 (BIA 1961).

The applicant knowingly submitted fraudulent affidavits, which were directly relevant to the applicant's eligibility, in order to procure an immigration benefit. These documents misrepresented the applicant's residence in the United States during the statutory period. The AAO finds this to be a material misrepresentation. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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