



U.S. Citizenship
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FILE:



MSC 02 085 63910

Offices: GARDEN CITY

Date: **OCT 30 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.

Perry J. Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in Garden City, New York. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for legalization under the LIFE Act.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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 its amenability to verification. *See* 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 applicant, a native of India who claims to have lived in the United States since October 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on December 24, 2001.

In a Notice of Intent to Deny (NOID) dated February 21, 2007, the director indicated that the applicant has failed to submit sufficient credible evidence in support of his application. The applicant was granted 30 days to submit additional evidence.

The applicant failed to respond to the NOID or submit additional evidence. On April 24, 2007, the director issued a Notice of Decision denying the application for the reasons stated in the NOID.

On appeal counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for legalization under the LIFE Act. Counsel does not submit additional documentation with the appeal.

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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation that the applicant submits in support of his claim that he meets the continuous unlawful residence requirement in the United States for the duration of the requisite period consists of letters and affidavits from individuals who claim to have employed or otherwise known the applicant in the United States during the 1980s as well as copies of rent receipts dated in 1986 and 1987.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The record includes (1) a notarized letter from [REDACTED] of St. Lucie County Appliance in Fort Pierce, Florida, stating that he employed the applicant to help him fix small appliances for his clients from 1981 to 1986; and (2) a notarized letter from [REDACTED] the self proclaimed owner of Jones Coin Laundromat in Fort Pierce, Florida, stating that the applicant was employed from December 1986 to July 1988.

The employment letters listed above do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address during the periods of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letters were not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the employment letters have limited probative value. They are not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The record includes an affidavit from [REDACTED] sworn to on June 20, 1991, attesting that she was the manager of the property located at [REDACTED], that the applicant resided at the apartment from 1981 to 1991, and that the applicant paid a monthly rent of \$125.00. This document has marginal evidentiary weight because [REDACTED] did not submit any document to establish her identity and residence in the United States during the period indicated on the affidavit, did not submit any document to establish the existence and ownership of the apartment and that she was employed by the owner to manage the apartment. The applicant did not submit copies of any documents addressed to him at that apartment. Nor did he submit copies of utility bills addressed to him to show that he resided at the apartment during the period in question. The applicant submitted photocopies of two generic receipts for \$125.00 each purportedly for the rent of [REDACTED] dated July 1986 and September 1987. The receipts are not sufficient evidence to overcome the substantial deficiencies in the affidavit by [REDACTED]. Additionally, the receipts are suspect because they were signed by an individual other [REDACTED] - the manager of the apartment. The receipts do not bear a date stamp or other official markings to authenticate the dates they were written. For all the reasons discussed above, the rental documents have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

As for the affidavits in the record from individuals who claim to have known the applicant in the United States during the 1980s, they have minimalist or fill-in-the-blank formats with very little input by the affiants. The affiants provided very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The affiants do not have direct personal knowledge of the events and circumstances of the applicant's residence in the United States. None of the affiants provided documents to establish their own identities and residence in the United States during the requisite period. Additionally, the affidavits are not accompanied by any documentary evidence - such as photographs, letters, and the like - of the

affiants' personal relationships with the applicant in the United States during the 1980s. For all the reasons discussed above, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish by the preponderance of the evidence that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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