identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: NEW YORK Date: MAR 05 2010

MSC 02 134 60111

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:

[redacted]

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 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, 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 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, counsel asserted that the director failed to apply the proper evidentiary standard. Counsel requested a copy of the Record of Proceedings (ROP) under the Freedom of Information Act (FOIA). Counsel stated that a brief or additional evidence would be submitted after receipt of the ROP. The record reflects that the request was completed on September 21, 2009.[1] No additional evidence was received; therefore, the record will be considered complete. 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.[2]

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). To meet his or her burden of proof, an applicant must provide evidence

---

[1] NRC2008018441.

[2] 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).

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).

On February 11, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). 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 relevant 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 school records, a medical letter, a Western Union letter, four receipts, two employment declarations, a church letter, attestations from six individuals claiming to know the applicant during the requisite period, and a copy of an airline ticket. 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 record reflects that the applicant claims to have first entered the United States in 1981. While the record contains no evidence of such entry, the record does contain certified copies of the applicant's New York school report cards, dated from September 1981 through September 1985. The record also contains a copy of the applicant's registration form, dated December

1981, for classes at The Language Lab from January 1982 to June 1982. The record contains a declaration from the Language Lab confirming the applicant's completion of the course. The above evidence will be given some weight as evidence in support of the applicant's claim.

The record also contains a declaration from [redacted], stating that he treated the applicant from June 1982 to September 1982 and the applicant's last visit was in October 1982. While the applicant failed to submit corroborating medical records or immunization records during the requisite period, the declaration will be given some weight as evidence in support of the applicant's claim.

The record contains a Western Union letter in the applicant's name, dated January 1985. The record also contains one original receipt and copies of three receipts in the applicant's name, dated in April 1986, August 1986, March 1987 and September 1987. The above evidence will be given some weight as evidence in support of the applicant's claim.

The record contains two employment declarations from [redacted] and [redacted] stated that the applicant was employed at [redacted] as a busboy from September 1987 to February 1990. [redacted] stated that the applicant was employed at [redacted] as a delivery boy from October 1983 to July 1987. The declarations do not conform to the regulatory standards for letters from employers as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The declarations failed 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. Given the lack of details, the declarations will be given minimal weight as evidence in support of the applicant's claim.

The declaration from [redacted] stated that the applicant had been a member of the centre since June 1985. The declaration does not conform to the regulatory standards for letters from organizations as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The declarant fail 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. Given the lack of relevant details, the declaration will be given minimal weight as evidence in support of the applicant's claim.

The attestations from [redacted] and [redacted] are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion, of the requisite period. These attestations 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 affidavits 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. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, the affidavits have minimal little probative value.

The record contains a copy of the applicant's ticket indicating travel from Karachi to Paris and from New York to Karachi on September 21; however, the year is not legible. Thus, the ticket will be given no weight as evidence in support of the applicant's claim.

It is noted that the record contains two Form I-687s, Application for Status as a Temporary Resident, signed by the applicant. The two Form I-687s contain several inconsistencies that cast doubt on the veracity of the applicant's claim. In one Form I-687, the applicant stated that he resided at [redacted], for the entire requisite period. In the second Form I-687, the applicant listed two different addresses of residence during the requisite period. The applicant failed to indicate he ever resided at [redacted] In one Form I-687, the applicant listed an absence to Pakistan from August 1982 to September 1982. In the other Form I-687, the applicant listed only one absence to Canada from August 1987 to September 1987.

In addition, in one Form I-687, the applicant stated that he was employed by [redacted] from October 1983 to July 1987 and [redacted] from September 1987 to February 1990. In the other Form I-687, the applicant stated that he worked for [redacted] from August 1985 to November 1988 and he failed to mention that he ever worked at [redacted] during the requisite period.

Furthermore, the inconsistencies between the applicant's Form I-687s create several discrepancies with the submitted evidence in the record regarding the applicant's place of residence and employment during the requisite period. For example, the Western Union letter and four receipts listed the applicant's place of residence at [redacted]. However, as previously mentioned, the applicant failed to mention that he ever resided at this address in one of his Form I-687s. The inconsistencies cast serious doubt on the credibility of the applicant's claim.

It is also noted that the record contains two Affidavits for Determination of Class Membership in League of United Latin American Citizens v. INS (LULAC) signed by the applicant. In one affidavit, the applicant stated he first entered the United States on September 21, 1981; whereas in the second affidavit, the applicant stated February 10, 1981. This inconsistency detracts from the credibility of the applicant.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. The inconsistencies in the record, noted above, 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.

Based upon the foregoing, the documents submitted in support of the applicant's claim have been found to be inconsistent and to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. 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.