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
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

L2

DATE: MAY 18 2012 OFFICE: GARDEN CITY, NY FILE: [redacted]

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. 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.

Thank you,

for 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, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established 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 asserts that the director failed to give proper weight to the evidence submitted, and that the applicant has provided sufficient evidence to establish his continuous residence. Counsel submits a brief and additional evidence.

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 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

---

[1] The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 June 20, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that some of the evidence submitted by the applicant, including affidavits and letters, were neither credible nor amenable to verification, and lacked sufficient detail. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated August 22, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but the evidence provided failed to overcome the grounds for denial.

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 during the requisite period. The applicant submitted evidence, including letters and affidavits as evidence to support his Form I-485 application. After reviewing the entire record, the AAO determines that he has not.

The record includes the following evidence submitted by the applicant which pertains to the requisite period:

Employment Letters

The applicant submitted a letter of employment, dated March 15, 1990, from [redacted] stating that the applicant had been employed from January 1981 through November 1985. [redacted] also attests to the applicant's work habits and character.

The applicant also submitted a letter of employment, dated March 9, 1990, from [redacted] stating that the applicant had been employed

from February 1986 to May 1988. [redacted] also attests to the applicant's work habits and character.

It is noted that the letters failed to provide the applicant's address at the time of employment and his job title or description. Also, the letters failed to show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). The letters, therefore, are not probative as they do not conform to the regulatory requirements.

Affidavits and letters

1. A July 12, 2007 affidavit from [redacted] attesting to having known the applicant since 1981. [redacted] also attests that the applicant has visited him 2-3 times per year for religious lessons and blessings, and he attests to the applicant's character. [redacted] does not indicate where and how he first met the applicant.

2. A July 12, 2007 affidavit from [redacted] attesting to having met the applicant in Manhattan, New York, during the spring of 1981. [redacted] also attests that since their acquaintance the applicant calls periodically for advice on how he could become a legal resident of the United States.

3. Affidavits, dated July 28, 2001, and July 11, 2007, from [redacted] attesting to knowing the applicant to have resided in the United States since 1981. [redacted] also attests that he met the applicant in March 1981 when the applicant came to meet him and that the applicant has visited him periodically particularly during religious events.

4. A July 12, 2007 affidavit from [redacted] attesting to knowing the applicant to have resided in the United States since 1981. [redacted] also attests that he met the applicant in Manhattan, New York, during the summer of 1981 and that since they met they became friends and see each other at community and religious events in New York City.

5. A July 12, 2007 affidavit from [redacted] attesting to knowing the applicant to have resided in the United States since 1981. [redacted] also attests that he met the applicant in New York, during the winter of 1981 and that since they met they became friends, communicate over the telephone and that they see each other at Bangladesh community events.

6. A July 12, 2007 affidavit from [redacted] attesting to knowing the applicant to have resided in the United States since 1983. [redacted] also attests that he learned from the applicant's family in Bangladesh that he had been residing in the United States since 1981. He also attests that he and the applicant visited one another frequently since they met and sometimes reside in the same house.

The record of proceedings also contains a letter, dated May 16, 2004, from [redacted] former Imam of [redacted] New York, NY 10009, stating that he has known the applicant since 1982, and from 1982 – 1986 while he was Imam the applicant attended Jum'aa prayer and Islamic holidays. [redacted] also attests to the applicant's character.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letter from the [redacted] does not comply with the above cited regulations because it does not state the address where the applicant resided during attendance period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letters are not deemed probative and are of little evidentiary value.

The remaining evidence in the record does not pertain to the requisite period, and the additional documentation, including the applicant's passport, do not establish the requisite continuous residence.

The applicant has not submitted any additional evidence in support of his claim that he entered the United States prior to January 1, 1982, and he had resided continuously in the United States during the entire requisite period.

The submissions, discussed above, do not individually, nor cumulatively, establish the requisite continuous residence. The affidavits and letters lack detail. Also, 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 affiants included any supporting documentation of the affiant's presence in the United States during the requisite period. The statements in the affiants are similar in their generalized descriptions of their acquaintance and contact with the applicant. None of the affiants stated how frequently they met the applicant and do not describe their relationship and contact with the applicant with specificity. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

In addition, the applicant has submitted questionable documentation. In an attempt to establish his continuous residence throughout the requisite period, the applicant submitted two letters of employment which are inconsistent with his Form I-687. It is noted that despite these letters of employment stating that the applicant had been employed by [redacted] during the requisite period, on his Form I-687, the applicant indicates that between January 1, 1981 and July 1988 he performed odd jobs in New York. He described his occupation as

Painter/Janitor, but he does not indicate that he had been employed by either [redacted] nor [redacted] whose letters of employment the applicant provided as proof of his employment between 1981 and 1988.

The above discrepancies cast considerable doubt on whether the letters of employment are genuine and whether the applicant resided in the United States from 1981 as he claims. 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.

Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.