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U.S. Citizenship
and Immigration
Services



22

JAN 27 2005

FILE: [REDACTED] Office: Houston Date:

IN RE: Applicant: [REDACTED]

PETITION: 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. All documents have been returned to the office that originally decided your case. 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by District Director, Houston, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he entered the U.S. in March 1981 and has resided continuously in unlawful status since that time. The applicant further asserts that he had failed to submit an application for legalization during the requisite filing period after having been discouraged by an unnamed attorney and an unspecified Immigration and Naturalization (INS) officer, both of whom purportedly informed the applicant that he was ineligible by reason of having engaged in unauthorized travel subsequent to May 1, 1987.

Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, the individual is not authorized under 8 C.F.R. § 292.1 or § 292.2 to represent the applicant. Therefore, this decision will be furnished to the applicant only.

An applicant for permanent resident status 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 and through May 4, 1988. 8 C.F.R. § 245a.11(b).

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. 8 C.F.R. § 245a.12(e). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is *probably* true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989). Preponderance of the evidence has also been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979).

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).

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant furnished the following evidence:

- A personal affidavit from the applicant indicating he had unsuccessfully attempted to obtain an affidavit from [REDACTED] attesting to the applicant's claim of employment for Mr. [REDACTED] in the capacity of housekeeper from 1981 to 1986;
- An affidavit from [REDACTED] dated April 22, 1990, in which the affiant attests to the applicant having resided with him as a "boy worker," in which capacity the applicant performed housekeeping and babysitting duties from 1981 through 1985;

- An affidavit from [REDACTED] who attests to the applicant having resided in the U.S. since December 13, 1981. The affiant bases his knowledge on having encountered the applicant at Friday evening mosque services;
- A statement of witness from [REDACTED] a family member, who attests to the applicant having resided in Houston, Texas from 1984 to 1986;
- A statement of witness from [REDACTED] a family member, who attests to the applicant having resided in Houston, Texas since 1981;
- An affidavit from [REDACTED] attesting to the applicant having resided in Houston, Texas since 1981. The affiant bases his knowledge on having encountered the applicant at a store where he was accompanied by his uncle;
- Affidavits from [REDACTED] and [REDACTED] both of whom attest to the applicant having resided in the U.S. since 1986; and
- Photocopies of lease agreements dated May 1, 1985, June 1, 1986, June 1, 1987 and July 1, 1988, all of which designate the applicant as party to the rental agreement;

The regulations at 8 C.F.R. § 245a.2(d) provide a list of documents that may establish continuous residence and specify that "any other relevant document" may be submitted. However, while the affidavits, third-party statements and photocopied lease agreements provided by the applicant could possibly be considered as evidence of continuous residence during the period under discussion, questions have arisen with regard to discrepancies in the applicant's documentation which impact on the overall credibility of his claim.

In the notice of intent to deny, the district director determined that the applicant's claim to have entered the U.S. in March 1981 conflicted with his May 12, 2002 testimony on the occasion of his adjustment interview. At this time, the applicant testified in a signed, sworn statement taken under oath before a Citizenship and Immigration Services (CIS) officer that he attended elementary and middle school through the 10th grade in Pakistan for a total of ten (10) years. According to the district director, as the applicant was not born until March 20, 1969, his having spent 10 years of elementary/secondary education abroad would indicate that he could not have entered the U.S. until at least 1983.

In response, the applicant asserted that during his elementary school education, he was able to combine grades 1 and 2 into one school year (1974), thereby enabling him to complete the 10th grade by March 1981, at which time he purportedly departed for the U.S. However, the applicant has provided no independent, corroborative evidence to support such assertion. Moreover, the applicant's response is still at variance with his interview statement, in which he specified that his education in Pakistan continued for a period of 10 years which, as noted by the district director, would directly contradict the applicant's claim to have entered the U.S. in March 1981.

The district director also made reference to a personal affidavit from the applicant, in which he indicated he had unsuccessfully attempted to obtain an affidavit from [REDACTED] attesting to the applicant's claim of employment for Mr. [REDACTED] the capacity of housekeeper from 1981 to 1986. At the time of his adjustment interview, the applicant informed the examining CIS officer that he did not remember Mr. [REDACTED] address

and that he never saw him again after 1987. At item 36 of his I-687 application, in which an applicant is requested to provide the full name and address of employers since his/her date of first entry, the applicant indicated that from February 1981 to April 1985, he performed "home work." No other information as to identity or address of employer is provided. Subsequently, in rebuttal to the notice of intent, the applicant belatedly submitted an affidavit from [REDACTED] which is dated April 22, 1990. In this affidavit, the affiant, Mr. [REDACTED] attests to the applicant having resided with him as a "boy worker," in which capacity the applicant performed housekeeping and babysitting duties from 1981 through 1985. In attempting to explain, in rebuttal to the notice of intent, how he was eventually able to obtain this affidavit, which was purportedly taken by the affiant on April 23, 1990, the applicant replied only that he subsequently received the document in the mail from a "relative" of the affiant. Here, too, the applicant's attempt to account for an apparent inconsistency in his claim and documentation must be deemed less than credible.

It was also observed by the district director in the notice of intent that, at his adjustment interview, the applicant had testified that he first entered the U.S. in March 1981 through Buffalo. The applicant further testified that since his initial entry, he has had three passports issued – one in New York in 1989, the second in Los Angeles in 1993, and the third in Los Angeles in 2002. According to the notice of intent, as the applicant was not in possession of a passport until 1989, travel from Pakistan to Canada would not have been possible in 1981, when the applicant claimed to have entered.

In response to the notice of intent, the applicant asserted only that, at the time of his purported March 1981 entry to the U.S., he traveled from Pakistan to Canada "by some one passport and entered U.S. by crossing border." No other details were provided. It is noted that the applicant had just become 12 years of age at this time. The applicant, in his rebuttal statement, has failed to provide any further details or specifics regarding his claimed March 1981 entry into the U.S. The statement he *does* provide is neither convincing nor coherent.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. In this case, the applicant has failed to explain, address or resolve the discrepancies and inconsistencies referenced in this notice of intent to deny. This, in turn, diminishes the credibility of the applicant's claim and supporting documentation. Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Finally, in support of his claim to continuous residence, the applicant has submitted photocopied lease agreements dating from 1985 to 1988, along with five affidavits attesting to his continuous residence prior to 1986. Of these five affidavits, that from [REDACTED] has already been deemed questionable by reason of the applicant's less than credible attempt to account for that document's initial absence and subsequent appearance in the record of proceedings. It should also be noted that two of these five affidavits are from affiants identifying themselves as family members of the applicant. Such individuals must be viewed as having a self-evident interest in the outcome of proceedings, rather than as independent and disinterested third parties. In addition, many of the affiants provide little or no detail regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence. The aforementioned affidavit from Mr. [REDACTED] provides no return address or phone number and, therefore, is not amenable to verification by CIS.

Given the applicant's failure to credibly resolve the inconsistencies and discrepancies raised in his testimony and his supporting documentation, along with his reliance on affidavits which do not meet basic standards of probative value, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required. Accordingly, the applicant is ineligible for permanent resident status under section 1104(c)(2)(B) of the LIFE Act.

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