



U.S. Citizenship
and Immigration
Services

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FILE:



Office: Houston

Date: DEC 20 2006

MSC 02 248 62856

IN RE:

Applicant:



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:



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, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Houston, Texas, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel contends that the applicant has submitted sufficient evidence to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988. Counsel asserts that Citizenship and Immigration Services, or CIS (formerly the Immigration and Naturalization Service, or the Service) failed to acknowledge receipt of the applicant's response to the notice of intent to deny.

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. See section 1104(c)(2)(B) of the LIFE Act and 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. 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 petitioner 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 or petition.

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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative, and credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act) on December 12, 1989. At part #3 of the Form I-687 application where applicants were asked to list their date of birth, the applicant listed March 26, 1964. The applicant included a separate signed affidavit with his Form I-687 application in which he claimed he first entered the United States on February 15, 1981. However, the applicant failed to provide any independent evidence to support his claim of continuous residence in the United States since prior to January 1, 1982.

Subsequently, on June 5, 2002, the applicant filed his Form I-485 LIFE Act application. In support of his claim of residence in the United States from prior to January 1, 1982, the applicant submitted a letter that is signed by [REDACTED]. In his letter, [REDACTED] stated that he first met the applicant in 1984 through family friends. [REDACTED] noted that the applicant was living somewhere in Florida and working as a desk clerk in a motel at that time. [REDACTED] declared that he and the applicant subsequently remained in contact via the telephone with the applicant making some visits to the Houston, Texas area. Although [REDACTED] attested to the applicant's residence in this country since 1984, he failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in this country. Further, [REDACTED] failed to provide any information relating to the applicant's residence in the United States in that period prior to January 1, 1982 up to 1984.

The applicant included an affidavit that is signed by [REDACTED] who indicated that he first met the applicant at family gathering in New Jersey in the summer of 1984. [REDACTED] stated that he and the applicant subsequently stayed in contact with each other on a regular basis and met whenever the applicant traveled to New Jersey. However, the affiant failed to provide any testimony relating to the applicant's residence in the United States in that period prior to January 1, 1982 up through the summer of 1984. In addition, [REDACTED]'s testimony lacked sufficient details and specific verifiable information relating to the applicant's residence in this country for that portion of the requisite period beginning in the summer of 1984 to May 4, 1988.

The applicant also provided an affidavit that is signed by [REDACTED] [REDACTED] declared that he first met the applicant at a wedding party in Miami, Florida in or around April of 1981. [REDACTED] stated that he and the applicant became good friends and they subsequently maintained contact by phone, as well as two visits by the applicant to Jersey City, New Jersey. [REDACTED] noted that he and the applicant have had more regular contact since he moved to New York in 1986. Although [REDACTED] attested to the applicant residence in the United States since April 1981, he did not provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country during the requisite period, to corroborate the applicant's claim of residence in this country.

The record shows that the applicant was interviewed regarding his Form I-485 LIFE Act application at CIS' District Office in Houston, Texas on June 25, 2003. The record further shows that applicant's counsel accompanied him to this interview. The interviewing officer's notes reveal that the applicant testified under oath that he first entered the United States from Canada when he was twenty-two to twenty-four years old. Both the applicant and counsel signed the interviewing officer's notes acknowledging that they had read the notes and confirming the accuracy of the applicant's testimony as contained in these notes. As noted above, the applicant listed his date of birth as March 26, 1964 at part #3 of the Form I-687 application. If the applicant entered the United States for the first time when he was twenty-two to twenty-four as he testified under oath, the date he first entered this country would be sometime between March 26, 1986 and March 26, 1989. This testimony directly contradicted the applicant's claim that he first entered this country in February of 1981 when he was sixteen years old. Neither the applicant nor counsel offered any explanation for the contradictory testimony provided by the applicant relating to his age when he first entered the United States.

In the notice of intent to deny issued on October 29, 2003, the district director questioned the veracity of the applicant's claimed residence in the United States. Specifically, the district director concluded that the applicant had failed to disclose that he had been absent from the United States when an Indian passport had been issued in his name in Bombay, India on November 9, 1986. The district director also noted that it was highly unlikely that the applicant had completed his second year of college in Bombay, India in 1979 when he was fifteen years of age at his interview on June 23, 2003. However, the district director failed to cite any authority or source of information that demonstrates that an Indian citizen must be present in India to apply for and be issued an Indian passport. A wide range of countries including the United States allow citizens to apply for and be issued passports through the mail. Although the term "high school" is used in the United States to describe schools offering a secondary education, it is common practice in many countries outside of this country to refer to schools providing education at the secondary level as "colleges." Consequently, the district director's finding that the applicant had been absent from the United States and in India on November 9, 1986 must be considered as speculative. Further, it appears reasonable and likely that the applicant had in fact completed his second year of secondary education in Bombay, India in 1979 when he was fifteen years old. Nevertheless, the district director did cite other valid issues that tend to undermine the credibility of the applicant's claim of residence in this country for the requisite period in the notice.

The district director further questioned the veracity of the applicant's claimed residence in the United States as a result of his sworn testimony at his interview that he first entered the United States from Canada when he was twenty-two to twenty-four years old. The district director also noted the limited probative value of the evidence submitted by the applicant in support of his claim of residence in this country from prior to January 1, 1982 to May 4, 1988. The applicant was granted thirty days to respond to the notice.

In response, counsel submitted a statement in which she contended that the applicant had misstated his age when he testified that he was twenty-two to twenty-four when he first entered the United States from Canada at his interview on June 23, 2003. Counsel asserted that the applicant was nervous during his interview and indicated that his misstatement was due to the significant period of time that had passed since his initial entry into this country. However, as noted above, both the applicant and counsel signed the interviewing officer's notes acknowledging that they had read the notes and confirming the

accuracy of the applicant's testimony as contained in these notes. Without independent evidence to corroborate the assertions advanced by counsel in her response, the explanations counsel offered to address the discrepancy in the applicant's testimony cannot be considered as either plausible or reasonable. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also requested a sixty-day extension to submit additional documentation in support of the applicant's claim of residence in this country for the period in question. However, the record contains no evidence to reflect that either counsel or the applicant submitted any additional material within that sixty-day period.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on March 24, 2004.

On appeal, counsel asserts that CIS failed to acknowledge receipt additional material submitted in support of the applicant's response to the notice of intent to deny. Although counsel includes a photocopy of a United States Postal Service receipt for certified mail dated January 29, 2004 as well as additional material that were included in this mailing, counsel fails to submit a corresponding postal return receipt that is signed to demonstrate that CIS had in fact received this correspondence. Regardless, a review of the record shows that counsel submitted her response to the notice and new evidence in support of the applicant's claim of residence with the appeal. Therefore, it must be concluded that the applicant has been afforded the opportunity to explain discrepancies and rebut any adverse information relating to his claim of residence in the United States for the period in question as cited in the notice of intent to deny. Consequently, any implication that the applicant was denied due process or unfairly prejudiced as a result of the district director's denial of the Form I-485 LIFE Act application is without merit.

Counsel submits an additional affidavit of residence in support of the applicant's appeal. The affidavit is signed by Ashwin G. Patel, who states that he has known the applicant since 1983 when he working in a motel in Miami, Florida. [REDACTED] declared that he and the applicant subsequently remained in contact by telephone with the applicant informing him on an unspecified date that he was moving to New York. While [REDACTED] attested to the applicant's residence in this country since 1983, he failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in this country. In addition [REDACTED] failed to provide any information relating to the applicant's residence in the United States in that period prior to January 1, 1982 up to 1983.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed and verifiable supporting documentation seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the period in question. The applicant himself has diminished the credibility of his claim of continuous residence in this country since prior to January 1, 1982 by providing conflicting testimony regarding his age when he first entered the United States. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal probative value and his own contradictory testimony relating to the date he first entered this country, 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 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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