



U.S. Citizenship
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FILE: MSC 01 303 60695

Office: Dallas

Date: MAY 25 2006

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. 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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 applicant has provided sufficient and credible evidence to establish continuous residence in the United States from prior to January 1, 1982 to May 4, 1988. Counsel contends that the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) erred in denying the application in light of the totality of the circumstances.

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* § 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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment should be on the letterhead stationery of the employer, if the employer has such stationery, and must include: the applicant's address at the time of employment; the applicant's exact period of employment; any periods of layoff the applicant may have experienced; the applicant's duties with the company; whether or not the information relating to the applicant's employment was taken from official company records; and the location and availability of these company records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of

the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

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 applicant has provided evidence that raises serious questions regarding the credibility of his claim of residence in this country for the period in question.

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 October 29, 1990. At part #19 of the Form I-687 application where applicants were asked to list all Social Security numbers used, the applicant listed [REDACTED]. The applicant listed his addresses of residence as [REDACTED] in Houston, Texas from February 1981 to April 1986 and [REDACTED] in Houston, Texas from April 1986 to February 1989 at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since entry. The applicant indicated that he was a member of the Islamic Mission [REDACTED] in Houston, Texas since 1982 at part #35 of the Form I-687 application where applicants were asked to all affiliations or associations with clubs, organizations, churches, unions, businesses, etc. At part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant indicated that he was employed by Swiss Chalet in Houston, Texas as a waiter from June 1981 to July 1983 [REDACTED] in Houston, Texas as a filing clerk from August 1983 to April 1986, Novatex Construction Company in Houston, Texas as a laborer from May 1986 to September 1988, and East Texas Industrial Uniform and Linen in Conroe, Texas as a presser from October 1988 to October 29, 1990, the date the Form I-687 application was submitted.

In support of his claim of residence in the United States since prior to January 1, 1982 to May 4, 1988, the applicant submitted six affidavits. The applicant submitted an affidavit that is signed by [REDACTED] who provided a listing of addresses for the applicant during the period in question that are consistent with his listing of addresses of residence at part #33 of the Form I-687 application.

The applicant provided an affidavit that is signed [REDACTED] Mr. [REDACTED] declared that he first met the applicant in 1981 when he resided at the [REDACTED] Street address in Houston, Texas. Mr. [REDACTED] indicated that he continued to maintain a friendship with the applicant through the date the affidavit was executed in 1990. While Mr. [REDACTED] testified as to the applicant's address of residence in 1981, he failed to provide any additional information relating to the applicant's residence in the United States through May 4, 1988.

The applicant included an affidavit that is signed [REDACTED] Mr. [REDACTED] stated that the applicant resided with him at the [REDACTED] Street address in Houston, Texas from February 1981 to April 1986. Although Mr. [REDACTED] attested to the applicant's address of residence through April 1986, he failed to provide any testimony relating to the applicant's residence in the United States from May 1986 to May 4, 1988.

The applicant submitted an affidavit signed by [REDACTED] who testified that he had knowledge that the applicant resided in Houston, Texas since February 1981. However, Mr. [REDACTED] failed to provide sufficient details and specific verifiable information relating to the applicant's residence in this country since prior to January 1, 1982 to May 4, 1988.

The applicant provided an affidavit that is signed by [REDACTED] who indicated that the applicant was his friend and they resided together at [REDACTED] in Houston, Texas from April 1986 to February 1989. While Mr. [REDACTED] testified as to the applicant's address of residence from April 1986 to February 1989, he failed to provide any additional information relating to the applicant's residence in the United States from prior to January 1, 1982 to March 1986.

The applicant included an affidavit that is signed by [REDACTED] declared that he and the applicant worked together at the [REDACTED] from 1981 to 1983 and that they remained friends thereafter. Although Mr. [REDACTED] stated that to the best of his knowledge the applicant continued to reside after 1983, he failed to provide any detailed or specific verifiable information relating to the applicant's residence in this country from 1984 to May 4, 1988.

The applicant submitted four letters of employment from [REDACTED] Novatex Construction Company, and East Texas Industrial Uniform and Linen respectively, in support of the listing of his employment at part #36 of the Form I-687. However, none of the employment letters contains the applicant's address at the time of employment as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, the letters from [REDACTED] and [REDACTED] both stated that the applicant utilized the same Social Security number, [REDACTED] that he had listed at part #19 of the Form I-687 application where applicants were asked to list all Social Security numbers used, but the record is devoid of any evidence such as tax documents or Social Security Administration records that would tend to corroborate the claim that the applicant used this Social Security number. Moreover, the

letter from East Texas Industrial Uniform and Linen indicated that the applicant had been employed by this enterprise beginning in October 1984, rather than October 1988 as the applicant had listed at part #36 of the Form I-687 application. These factors tend to diminish the probative value of the four employment letters submitted by the applicant.

The applicant included a letter of membership dated July 28, 1990 that is signed by [REDACTED] and contains the letterhead of the Islamic Mission [REDACTED] in Houston, Texas. In his letter, Mr. [REDACTED] testified that the applicant and his wife had been active members of this religious institution since early 1983 and his two children attended summer classes in the mosque. However, Mr. [REDACTED] did not indicate that he was an official of the Islamic Mission [REDACTED], failed to list his title with this religious institution, and failed to include the applicant's addresses of residence during that period that he was a member as required under 8 C.F.R. § 245a.2(d)(3)(v). The fact that this required information is omitted from this letter tends to limit the probative value of the document.

Subsequently, on July 30, 2001, the applicant filed his Form I-485 LIFE Act application. The applicant included copies of previously submitted documentation in support of his claim of residence in the United States since prior to January 1, 1982.

On June 4, 2003, the Service issued a Form I-72, Request for Additional Evidence, in which the applicant was asked to provide additional evidence in support of his claim of residence in this country for the requisite period and proof of current employment. In response, the applicant submitted tax documents and a certificate of occupancy to reflect his most current employment. The applicant also submitted colored photocopies of seven postmarked envelopes containing cancellation marks occurring during the requisite period. However, the addresses attributed to the applicant on these envelopes do not match the addresses of residence for the corresponding time periods listed by the applicant at part #33 of the Form I-687 application. Specifically, one envelope lists the applicant's address as [REDACTED] in Edmond, Oklahoma, three envelopes list his address as [REDACTED] in Oklahoma City, Oklahoma, two envelopes list his address as [REDACTED] in Oklahoma City, Oklahoma, and the remaining envelope lists his address as [REDACTED] in Plano, Texas. The fact that the addresses attributed to the applicant on these seven envelopes conflict with his listing of addresses of residence at part #33 of the Form I-687 application seriously impairs the credibility of these documents as well as the credibility of his claim of residence in this country from prior to January 1, 1982 to May 4, 1988.

In the notice of intent to deny issued on May 25, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States. However, the district director stated that the applicant failed to submit any new evidence in response to the Form I-72 dated June 4, 2003, despite the fact that he did submit a response as described in the previous paragraph. The applicant was granted thirty days to respond to the notice and submit additional evidence in support of his claim of residence in this country since prior to January 1, 1982.

In response, the applicant submitted a statement in which he noted that the notice of intent had been mailed to him at an incorrect address. The applicant asserted that he had provided a response to the Form I-72 dated June 4, 2003, which included additional supporting documentation. The applicant submitted proof that he had mailed a response to the Form I-72.

The district director determined that the applicant had failed to submit sufficient evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on June 19, 2004.

On appeal, counsel asserts that the applicant has provided sufficient and credible evidence to establish continuous residence in the United States from prior to January 1, 1982 to May 4, 1988. Counsel states that the discrepancy relating to the applicant's dates of employment for East Texas Industrial Uniform and Linen was the result of a typographical error when such date was listed in the employment letter as October 1984 rather than October 1988. However, neither counsel nor the applicant provided any independent evidence from any officer or representative of East Texas Industrial Uniform and Linen that would corroborate the claim that his employment dates for this enterprise were incorrectly listed in the letter as a result of typographical error.

Counsel provides copies of five previously submitted postmarked envelopes and four new postmarked envelopes. The four new postmarked envelopes all list the applicant's address as [REDACTED] in Oklahoma City, Oklahoma. Counsel contends that the postmarked envelopes submitted by the applicant in support of his claim of residence in this country for the requisite period contain addresses that belonged to relatives instead of his actual addresses of residence because his relatives' addresses were convenient to use as mailing addresses as such addresses had been constant for a long period of time. However, the record contains no independent evidence to establish that any of applicant's relatives ever lived at the addresses he purportedly used as mailing addresses. Counsel and the applicant both failed to provide any explanation as to why these envelopes did not include any indication that this correspondence was being mailed to him in care of a relative purportedly residing at the addresses listed on these envelopes or that such envelopes and correspondence were then forwarded to the applicant at his address of residence.

Counsel submits a notarized letter that is signed and sealed by officers of the Pakistani Ministry of Foreign Affairs, Consulate General of Pakistan in Los Angeles, California, and the Senior Postmaster of the General Post Office in Karachi, Pakistan. This letter states that a selection of ten postmarked envelopes submitted by the applicant in support of his claim of residence in this country for the requisite period had been examined and found to contain genuine postmarks demonstrating that such envelopes had been mailed through the Pakistan postal services regular mail system. However, the genuineness of the postmarks on these envelopes is not at issue in these proceedings. Rather, the credibility of these documents is diminished because the envelopes were purportedly mailed to the applicant at four different addresses from prior to January 1, 1982 to May 4, 1988, but none of these addresses match those listed by him as his addresses of residence at part #33 of the Form I-687 application.

Without independent evidence to corroborate the assertions put forth on appeal, the explanations counsel offers to address the discrepancies in the applicant's supporting documents 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 Obaighbena*, 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).

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 supporting documentation and the existence of conflicting evidence that contradicts critical elements of the applicant's claim of residence 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 requisite period. 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, 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 as well.

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