



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE: [Redacted]
MSC 01 359 62384

Office: Houston

Date: OCT 24 2006

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:

[Redacted]

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 sustained.

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 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 the applicant's status as an undocumented illegal alien and the considerable passage of time prevent him from obtaining further contemporaneous documentation in support of his claim of residence in this country during the requisite period. Counsel states that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) erred in concluding that the applicant had been absent from the United States in 1985.

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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows:

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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 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 February 21, 1990. With the Form I-687 application, the applicant included four affidavits of residence, three employment letters, and photocopies of five separate residential leases in support of 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 subsequently submitted a new affidavit of residence.

In the notice of intent to deny issued on February 4, 2004, 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 Jhedeabad, India on October 17, 1985. The district director also concluded that the applicant had obtained a B-2 visitor's visa from the American Consulate in Bombay, India, on August 9, 1989, and, therefore had to convince a United States State Department official that he had previously maintained residence, employment, and citizenship in India. However, the district director failed to cite any authority or source of information which 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. In addition, it is irrelevant that the applicant obtained a B-2 visitor's visa from the American Consulate in Bombay, India, on August 9, 1989 as that period in which the applicant must establish continuous residence in the United States is from prior to January 1, 1982 to May 4, 1988 under section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). Consequently, the district director's conclusions must be considered as speculative in nature and cannot be the sole basis of support for the findings that the applicant had been absent from the United States and in India on October 17, 1985 and

that his initial entry into the United States occurred after he was issued B-2 visitor's visa in India on August 9, 1989.

The district director further questioned the veracity of the applicant's claimed residence in the United States because he concluded that the five residential leases submitted in support of such claim of residence had apparently been altered. The district director based this conclusion upon telephone calls made by a CIS officer who contacted the apartment complexes listed in the leases and discovered that the zip codes listed in the leases did not match the most current zip codes for these apartment complexes. However, the record contains only skeletal and informal notes to reflect these verification calls. Furthermore, the notes relating to these verification attempts appear to have been made sometime after the fact and, therefore, must be considered to be a second or third hand recounting of the calls. In such cases, the record must at least contain a first hand contemporaneous account by the CIS employee who made the call in which he or she identifies himself or herself and provides very specific information as to whom he or she spoke to, what was said and when the call was made. In addition, it must be noted that the leases are for one-year terms beginning in 1982 up through 1988 and the verification calls did not occur until January 2004. In that interim period, the Houston, Texas area has undergone much growth and expansion with numerous zip code and redistricting changes. Moreover, the district director failed to cite any authority or source of information which establishes that the addresses and corresponding zip codes in these leases were incorrect for the dates of each respective lease term. Therefore, the district director's finding that these residential leases had been altered must be considered as speculative and an insufficient basis to deny the application.

Both in response to the notice of intent to deny and on appeal, counsel contends that the applicant's family in India had obtained his passport on his behalf on October 17, 1985, while he was here in the United States. This explanation appears to reconcile any discrepancy regarding the manner in which the applicant obtained the passport on such date. Counsel asserts that the applicant had submitted sufficient evidence to support his claim of continuous residence in this country for the period in question. Counsel notes the difficulties the applicant has encountered in obtaining further supporting documentation because of the significant passage of time and the fact that he was an undocumented illegal alien during the period in question.

In this instance, the applicant submitted evidence, including affidavits, letters, and contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated on *Matter of E-M-*, *id*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January

1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.