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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO

Date:

MSC 02 171 61038

AUG 13 2007

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. Any further inquiry must be made to that office.

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, Chicago, Illinois, 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, counsel argues that the director's decision improperly considered "physical presence" rather than "residence" during the requisite period. Counsel asserts that the director erred in his findings regarding the applicant's failure to establish physical presence and continuous residence. Counsel asserts that the director improperly failed to consider the evidence of the applicant's own statement and application and imposed unreasonable corroboration requirements upon the applicant.

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. 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 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).

Here, the submitted evidence is not relevant, probative, and credible. In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following photocopied evidence:

- Notarized affidavits from [REDACTED] of Elk Grove Village, Illinois and Mohammad Chaudhary of Cicero, Illinois, who indicated they have been acquainted with the applicant since 1981, and attested to the applicant's departure to Pakistan in July 1987 and his return to the United States in August 1987.
- A letter dated June 30, 1993, from [REDACTED], owner of Carrabotta Insurance Service in Chicago, Illinois, who indicated since the early 1980's, the applicant has been an outstanding customer by paying his payment to the insurance agency in a timely fashion.
- A receipt dated April 3, 1987, from [REDACTED] Store Fixtures, Inc.
- Several receipts dated during April 1988 from Fullerton Cash Register, Inc., [REDACTED] Store Fixtures, Inc., Royal Crown Bottling Company of Chicago and R. Sign Company.
- A Certificate of Resale dated December 14, 1987.
- An incomplete store lease agreement for a restaurant entered into on June 15, 1987 between [REDACTED] and "[REDACTED]" It is noted that the applicant's name has been handwritten in.
- A receipt from Royal Electronic Cash Register dated December 6, 1986.
- An appointment notice for a x-ray on July 14, 1984 from Fantus Clinic.
- A receipt dated in December 1986 and an undated letter from [REDACTED], president of Manau Cutler, Inc. in Chicago, Illinois, who indicated the applicant has been a customer since 1982. The affiant asserted that the applicant has maintained excellent credit at several locations.
- An undated letter from [REDACTED], accounts manager of Christ Panos Foods, Inc., in Chicago, Illinois, who indicated the applicant has been a good customer and friend since 1982. The affiant asserted that the applicant has always paid his bills in a respectable manner.
- A document dated March 11, 1982, from the National Bank of Pakistan in Chicago, Illinois.
- A receipt dated August 10, 1983, from Archer Furniture, Inc. in Chicago, Illinois, which listed the applicant's address at [REDACTED], Chicago, Illinois.

The applicant also submitted several photocopied receipts, pay stubs, an incomplete lease agreement and an inspection report from Chicago Department of Health. These documents, however, have little probative value as the documents failed to list the applicant's name or the dates on the documents are indecipherable.

On April 28, 2003, the director issued a Notice of Intent to Deny, advising the applicant that although he claimed entry into the United States with a non-immigrant visitor visa in May 1981, he has not provided any credible evidence to support his claim. The applicant was also advised that he had failed to submit any original evidence to establish his continuous residence in the United States during the requisite period. The director noted that the photocopied affidavits and other documentation had been taken into consideration; however, it was determined that the applicant had not established by a preponderance of evidence that she met the requirements to adjust her status under the LIFE Act.

Counsel, in response, asserted that at the time of the applicant's LIFE interview, the applicant indicated that his passport had been stolen in 1989. As evidence, counsel provided two police reports; one dated in November 1989 and the other with an indecipherable date. Counsel also asserted that at the time of the interview, original documents were in the applicant's possession, but the interviewing officer said she did not need to see them. Counsel provided the following original and photocopied documents:

- Rent receipts for property at [REDACTED] dated October 1981, December 1981 and October 1982.
- An appointment receipt dated September 19, 1981, from Fantus Health Center in Chicago, Illinois.
- A receipt with an indecipherable date from Archer Furniture, Inc. in Chicago, Illinois.
- An envelope with an indecipherable postmark. It is noted that the envelope was postmarked with a United States twenty-five cent stamp.¹
- An envelope postmarked in December 1986 from Pakistan and addressed to the applicant at [REDACTED] Chicago, Illinois.
- An envelope with an indecipherable postmark from the Consulate General of Pakistan in New York.
- The store lease agreement entered into on June 15, 1987 for premises at [REDACTED] Chicago, Illinois between [REDACTED] and [REDACTED]. As previously mentioned, the applicant's name was handwritten in.
- [REDACTED] June 30, 1993 letter.
- An Application for Customers/Non-customers Purchases of Monetary Instruments dated March 25, 1983. Said application listed the applicant's address as [REDACTED] Chicago, Illinois.

The statements of counsel on appeal regarding the amount and sufficiency of the applicant's evidence of residence, and the applicant's inability to produce additional evidence of residence for the period in question due to the passage of time have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States during the requisite period as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

1. [REDACTED] and [REDACTED] claimed to have known the applicant since 1981, but no attestations to the applicant actual residence in the United States were indicated, and neither affiant provided any details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence.
2. [REDACTED] and [REDACTED] indicated that the applicant has been a customer in good standing since the early 1980's and 1982, respectively, but no evidence was provided to support the affiants' claims.
3. The applicant has not provided any credible evidence such as a lease agreement, rent receipts, utility bills or affidavits from affiants to corroborate his residences during the requisite period. The applicant, throughout the application process, has not provided any employment documentation to corroborate his claims of employment listed on his Form I-687 application.
4. The fact that the applicant's name was handwritten on the Store Lease Agreement and not typed, raised questions to its authenticity. It is noted that the applicant claimed to have been a "cashier" at this establishment on his Form I-687 application.
5. Assuming, arguendo, that [REDACTED] and [REDACTED] are one and the same person, the fact that the affiant, in his affidavit, made no mention of either the applicant's employment at the restaurant or as a partner in the establishment further raises questions to the authenticity of the applicant's name on the lease agreement.

¹ The United States Postal Service increased its domestic postal rate to twenty-five cents on April 3, 1988. See [usps.com/history/history/his4_5.htm](https://www.usps.com/history/history/his4_5.htm)

6. The appointment receipt dated September 19, 1981 from Fantus Health Center has little probative value or evidentiary weight as the name listed on the receipt is indecipherable.
7. The x-ray appointment notice may only serve to establish the applicant's presence in the United States on July 14, 1984, it does not imply or affirm continuous residence.
8. The envelope postmarked in December 1986 from Pakistan raises questions of doubt as the applicant did not claim residence at this location [REDACTED] until October 1989.
9. The receipts from Royal Electronic Cash Register, Manau Cutlery, Inc., Archer Furniture, Inc. [REDACTED] Store Fixtures, Inc. dated April 3, 1987, as well as the rent receipts dated in 1981 and 1982, the Application for Customers/Non-customers Purchases of Monetary Instruments and the letter from the National Bank of Pakistan all list the applicant's address at [REDACTED]. The fact that: a) the applicant did not claim residence at this address on his Form I-687 application; b) the applicant did not claim employment as this address until August 1986; and c) the Store Lease Agreement was not entered into until June 15, 1987, raises questions to the authenticity of these documents.

These factors tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

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).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is 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). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation, absence of a plausible explanation, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.