



U.S. Citizenship
and Immigration
Services

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FILE: MSC 01 320 60182

Office: NEW YORK

Date: APR 17 2008

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director concluded that the applicant failed to submit sufficient credible evidence to establish 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. The director specifically addressed the number of inconsistencies caused by the applicant providing different information when completing his two Form I-687s and further noted that two of the contemporaneous documents the applicant submitted had been altered, thereby, significantly compromising the applicant's credibility and the credibility of the evidence submitted to establish his unlawful residence. Accordingly, the director's denial was based on two grounds. The first ground was based on a lack of credible evidence to support the applicant's claim, while the second ground was based on the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act) as an individual who sought to procure an immigration benefit through fraud.

On appeal, counsel reasserts the applicant's claim, challenging the director's adverse findings and stating that the director erred in determining that various documentation submitted by the applicant was fraudulent.

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 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 Citizenship and Immigration Services (CIS) 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).

In the present matter, the primary issue is whether the applicant provided sufficient credible documentation to support his claimed unlawful residence in the United States during the statutory time period. After a thorough review of the documentation on record, the AAO concludes that the applicant has failed to meet this burden.

The record shows that two Form I-687s were completed by the applicant. The first application was completed in 1989 and the second was completed and accepted for filing on April 15, 2002. The record also shows that on August 16, 2001 the applicant filed a Form I-485 application under provisions of the LIFE Act. Documents submitted to support the claims made in these applications include the following:

1. A temporary permit issued on September 24, 1987 by the Texas Department of Public Safety. The lists a Houston, Texas address for the applicant. It is noted that the applicant never claimed to have resided in the State of Texas. As such, it is unclear why a Houston, Texas address is shown as belonging to the applicant in 1987 when he claimed to have resided in the State of New York during this time period.
2. A letter dated May 11, 2000 from [REDACTED] M.D., who claimed that the applicant was seen in his office on July 13, 1987 and on April 27, 1988. However, this individual gave no indication as to how this information was obtained. As such, this letter can be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory time period.
3. An undated letter from the director of Elmhurst Muslim Society, Inc., stating that the applicant has attended Friday religious services at this congregation since 1981. Although the applicant's most recent residential address is provided, the letter does not mention the applicant's residential address during the statutorily relevant time period. More importantly, the applicant did not list his affiliation with this organization on either of his Form I-687 applications even though No. 34 of the application specifically asks for this relevant information. Accordingly, based on these various shortcomings, this letter can be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.
4. An employment affidavit dated January 30, 2001 from [REDACTED], who claimed that the applicant worked for him at [REDACTED] Appliance and Discount Center from September 1981 to March 1987. However, [REDACTED]'s affidavit is not in compliance with the regulatory requirements cited in 8 C.F.R. § 245a.2(d)(3)(i), which requires that the employer provide the applicant's address at the time of employment, state whether or not the information was taken from official company records, and to indicate where records are located and whether the Service may have access to them.
5. An affidavit dated January 30, 2001 from [REDACTED] i. Although the affiant claimed to have known the applicant since 1981, she provided no details about the circumstances and events of the applicant's life during the statutory time period. As such, the affiant's statement lacks any details that would lend credibility to an alleged 20-year relationship with the applicant and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

6. Affidavits from [REDACTED] and [REDACTED], all claiming that the applicant resided with them, respectively, during various years that fall within the statutory period. All three affidavits are similar in their content in that all three affiants claimed to have shared a residence with the applicant during various years that fall within the statutory period. However, all three affidavits are deficient in their lack of detailed information and at least two of the affidavits are in conflict with the first Form I-687 submitted by the applicant. Specifically, [REDACTED] whose affidavit is dated January 30, 2001, stated that he had known the applicant since 1981 and had shared an apartment with the applicant from 1981 to 1985. This information is inconsistent with No. 33 of the first Form I-687, where the applicant claimed to have continuously resided at the same residence from December 1981 to October 1987. Mr. [REDACTED] whose affidavit is dated August 13, 2001, claimed that the applicant shared an apartment with him at [REDACTED] from October 1987 to March 1993, a claim that is also inconsistent with No. 33 of the first Form I-687, which indicates that the applicant resided at [REDACTED], New York, New York during that time period. The only statement that is consistent with both of the applicant's Form I-687s is that of [REDACTED] whose affidavit is dated August 13, 2001. However, the only information provided by this affiant is the address of the residence he claimed to have share with the applicant and the general dates of their cohabitation. Thus, despite its consistency with the applicant's statement statements, this affidavit lacks any details to lend credibility to the affiant's alleged 20-year relationship with the applicant and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period. Similarly, based on the inconsistencies noted above, the statements of [REDACTED] and [REDACTED] can also be afforded minimal evidentiary weight.
7. An employment letter dated August 9, 1988 signed by [REDACTED], the manager of Rex Cinema. Mr. [REDACTED] stated that the applicant was employed by this establishment on a part-time basis from December 1985 to July 1988. This employment letter also falls short of the regulatory requirements cited in 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to provide the applicant's address at the time of employment, does not state whether or not the information was taken from official company records, and does not indicate where records are located and whether the Service may have access to them.
8. A photocopied purchase receipt issued by Eastern Euro 220 on April 27, 1988. This document can be afforded minimal evidentiary weight as there is no indication that it belongs to the applicant.

On May 23, 2007, the director issued a notice of intent to deny (NOID) reviewing information provided by the applicant at his May 7, 2007 interview in connection with the Form I-485 filed in 2001. The director noted that the applicant failed to disclose a previously obtained J-1 visa, which he used to enter the United States on September 5, 1987, subsequently departing on September 25, 1987. The director also noted that CIS records show the applicant's subsequent entry using a B-2 visa on April 10, 1989. The director concluded that even if the applicant had successfully proved that he resided in the United States since the commencement of the statutory period, his prolonged absence from the date of his departure on September 25, 1987 and April 10, 1989, the date the applicant reentered the United States using a B-2 visitor visa, suggests an interruption in any continuous residence that may have accrued. Lastly, the director noted that the affidavits submitted on the applicant's behalf fail to provide sufficient information and therefore lack probative value.

In response, counsel submitted a letter dated June 21, 2007 along with a statement from the applicant, dated June 21, 2007, and several additional documents. One of the new documents was a foreign affidavit dated July 13, 2007 from [REDACTED], a current resident of Pakistan. Mr. [REDACTED] stated that the applicant visited Pakistan in August 1987 and in March 1989. According to the affiant, neither of the applicant's visits lasted 45 days or longer. This affidavit does not, however, address the critical issue of the applicant's departure from the United States on September 25, 1987.

Additionally, the applicant submitted copies of receipts from Wyckoff Heights Medical Center and New York Telephone. As properly noted by the director in the subsequent denial of the Form I-485, this document was submitted with portions missing and clearly appeared to have been altered, particularly in light of the date that appeared at the upper right hand corner of the document suggesting that services were rendered on March 8, 1984, and the issue date of the form at the lower left hand corner, which indicated that this version of the form was issued in February 1993, nearly nine years after the purported date of service. A photocopied receipt dated November 28, 1988 from New York Telephone was also found to be altered. Specifically, this photocopy was also submitted with missing portions, thus compromising the validity of the actual document, whose original version was not provided. The AAO further notes that the billing address shown in the receipt does not match any of the residential addresses provided by the applicant in the two Form I-687s. This fact further detracts from this document's minimal probative value.

In his statement, the applicant denied having been absent from the United States for longer than 45 days, claiming that he entered the United States without inspection on November 2, 1987 to continue his purported unlawful residence. However, the numerous inconsistencies in information provided by the applicant in his two Form I-687 applications as well as affidavits that are inconsistent with either one or both of those applications seriously compromise the applicant's dubious claim and his overall credibility. As such, the applicant's statements are insufficient to resolve any of the considerable deficiencies noted above. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

With regard to inconsistencies arising from the information the applicant provided in his May 2007 interview, he claimed that it was hard for him to recall events that took place two decades ago. He stated that he provided the information to the best of his recollection. However, this explanation does not address the applicant's failure to provide accurate information regarding his 1987 absence, which took place only two years prior to the applicant's submission of his first Form I-687, an it certainly does not explain why the applicant failed to disclose a 1989 absence, which took place only months before that same application was completed. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.* The statements of an affiant who merely reiterates portions of the applicant's claim cannot be deemed independent objective evidence, particular in light of the applicant's prior submission of statements from other affiants whose claims do not necessarily match the information provided by the applicant in at least one of his Form I-687 applications.

Lastly, the applicant asserted that his first Form I-687 was completed by an attorney who mistakenly claimed that the applicant's departure in 1987 was to visit India rather than Pakistan. However, this inconsistency is only one of a number of others, which were discussed above. The applicant did not acknowledge any other inconsistency. Moreover, even if all inconsistencies had been acknowledged, the AAO notes that the applicant signed the Form I-687 under penalty of perjury, thereby attesting that all the information set forth therein was true. That being the case, it is the applicant's burden to review the information offered in an application to ensure its accuracy. Merely recanting the information at a later time under the argument that a

third party erred in providing the information is insufficient to explain and resolve any inconsistencies that may arise when reviewing the applicant's record in its totality.

Accordingly, the director issued a decision dated August 6, 2007 denying the applicant's Form I-485. The director noted that there were inconsistencies between the applicant's two Form I-687 applications with regard to the applicant's absences. The director also discussed the numerous letters and affidavits submitted on the applicant's behalf, finding that all were lacking sufficient information and supporting evidence to be accorded substantial evidentiary weight. Lastly, with regard to the receipts from the medical center and phone company, the director found both to be altered and therefore fraudulent. Based on this last finding, the director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By engaging in such action, the applicant has negated his own credibility as well as the credibility of his claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988. In addition, the applicant rendered himself inadmissible to the United States under any visa classification, immigrant or nonimmigrant pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation.

On appeal, counsel merely reiterates the comprehensive history regarding the applicant's departures from and returns to the United States, maintaining that any inconsistencies in the applicant's account of these absences resulted from the passage of time and the applicant's inability to properly recall all of the relevant details. However, counsel's argument does not account for the inconsistent information provided on the applicant's first Form I-687 application, which was completed shortly after the absences occurred. Moreover, as previously stated, the considerable inconsistencies perpetuated by the applicant's explanations cannot be resolved by mere statements of counsel, as the unsupported 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).

With regard to the director's finding of fraud, counsel denies that the applicant was guilty of any wrong-doing, claiming that the applicant did not tamper or deform either of the receipts submitted to establish his continuous residence. Again, counsel's mere statements will not suffice to overcome the director's finding. Further, it is unclear why the original receipts were not provided for the AAO's review.

Lastly, counsel asserts that CIS should have verified the employment information provided by Subash [REDACTED] as well as the statements of [REDACTED] and [REDACTED] which address the issue of the applicant's residence. However, with regard to the employment letter, [REDACTED]'s statement is inconsistent with the information provided by the applicant in his Form I-687s, neither of which includes employment for Mr. [REDACTED] in any capacity. In general, counsel's statements, particularly in light of the director's finding of fraud, are without merit, as all of the supporting evidence submitted by the applicant is now deemed suspect.

Accordingly, based on the unresolved inconsistencies and deficient supporting documentation, the AAO concludes that the applicant has failed to establish that he resided in continuous unlawful status in the United

States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. As such, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

In addition, the fact that the applicant utilized documents in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant application and submitting falsified documents, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, the director's finding that the applicant submitted falsified documents, we affirm the prior finding of fraud. The applicant failed to establish that he is admissible to the United States as required by 8 C.F.R. § 245a.12(e). Consequently, the applicant is ineligible to adjust to 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.