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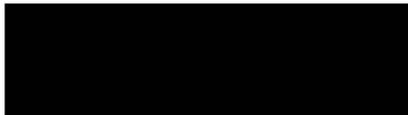
Office: NEW YORK

Date:

AUG 28 2008

MSC 01 363 61799

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. The file has been returned to the National Benefits Center. 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.

for 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, New York, 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 submitted sufficient credible evidence, and the director's decision is arbitrary, capricious, and against the weight of the evidence. Counsel does not submit additional evidence on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

On September 19, 2007, the director issued a notice of intent to deny (NOID) informing the applicant of the Service's intent to deny his LIFE Act application because he had failed to establish the requisite continuous residence. The director noted that the applicant failed to submit sufficient credible evidence to support his application. The director noted that the applicant testified that he first entered the United States in October 1981 without inspection, but submitted conflicting affidavits from [REDACTED] who attests that the applicant first entered the United States in January 1980, and from [REDACTED] who attests that he has been residing in the United States since 1986, however, he also attests that the applicant first entered the United States in July 1980. The applicant was granted thirty days to respond to the notice.

In response to the NOID the applicant submitted a letter stating that the affidavits referenced in the NOID contained incorrect dates of entry, and submits "corrected" affidavits from [REDACTED] stating that the applicant first entered the United States in October 1981. No additional evidence was submitted.

In the Notice of Decision, dated October 23, 2007, the director denied the instant application because the applicant failed to establish the requisite continuous residence. The director noted that the applicant submitted two amended affidavits. However, the information submitted was insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the applicant has submitted sufficient evidence, namely, four affidavits, including corrected affidavits from [REDACTED] and two employment verification letters.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters and affidavits as evidence to establish the requisite continuous residence in support of his Form I-485 application. The AAO reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

#### Employment Letters

The applicant submitted a letter of employment from [REDACTED] of [REDACTED]'s Restaurant, located at [REDACTED]. The July 5, 1987 letter states that the applicant had been employed as a Cook from October 1981 to June 1987.

The applicant also submitted a letter of employment from [REDACTED] of FIVE STAR GAS STATION, located at [REDACTED]. The September 25, 1989 letter states that the applicant had been employed since July 1987.

It is noted however, that the letters failed to show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i).

### Affidavits

The applicant submitted the following:

- 1) An affidavit from [REDACTED] dated July 9, 2001, stating that applicant first came to the United States in 1981 and stayed with him in Hollis, New York, from October 1981 to June 1987. [REDACTED] also states that he has "been in close and regular touch" with the applicant throughout the applicant's stay in the United States.
- 2) Two affidavits from [REDACTED]. In his first affidavit, notarized on November 15, 1999, [REDACTED] attests that the applicant first entered the United States in January 1980. In his second affidavit, notarized on May 8, 2007, submitted in response to the NOID, [REDACTED] states that the applicant first entered the United States in October 1981, and that the applicant kept in touch on a regular basis.
- 3) Two affidavits from [REDACTED]. In his first affidavit, notarized on November 15, 1999, [REDACTED] attests that the applicant first entered the United States in January 1980. In his second affidavit, submitted in response to the NOID, [REDACTED] states that the applicant first entered the United States in October 1981. It is noted that in both affidavits Mr. [REDACTED] states that he only has been living in the United States since 1986.

It is noted that none of the applicants state how they dated their acquaintance with the applicant, or how frequently and under what circumstances they met the applicant. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affiants included any supporting documentation of the affiant's presence in the United States during the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

Contrary to counsel's assertion, the applicant has failed to submit sufficient credible evidence to establish his continuous residence in the United States during the requisite period. The applicant submitted affidavits from [REDACTED] which are questionable. As noted above, in his first affidavit [REDACTED] attests that the applicant first entered the United States in January 1980, and in his second affidavit he changed his testimony and stated that the applicant first entered the United States in October 1981. [REDACTED] also, in his first affidavit, attests that he has been residing in the United States since 1986, however, he also attests that the applicant first

entered the United States in July 1980; and, in his second affidavit he changed his testimony to state that the applicant first came to the United States in October 1981. Counsel and the applicant state that the second affidavits are provided to correct typographical errors in the first affidavits from Mr. [REDACTED]. However, neither affiant, nor counsel or the applicant provided any reasonable explanation for the discovered errors.

In addition, the applicant claims that he first entered the United States in October 1981, and indicates, on his Form I-687, signed on March 24, 1990, that he had one absence from the United States during the requisite period, from June 1987 to July 1987, to get married in Pakistan. However, the applicant indicates on his two Biographic Data Forms, G-325A, signed on September 3, 2001, and on May 9, 2007, respectively, that he was married in Wah-Cantt, Pakistan, on January 2, 1987. The applicant has failed to provide any explanation for this discrepancy.

The above unresolved discrepancies cast considerable doubt on whether the applicant's claim that he entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has, therefore, 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. Given this, he 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.