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U.S. Citizenship
and Immigration
Services

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FILE:



MSC 02 095 60735

Office: GARDEN CITY

Date: DEC 29 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).

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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, the applicant argues that the director abused his discretion by arbitrarily denying his LIFE application without taking into favorable consideration his rebuttal to the Notice of Intent to Deny. The applicant puts forth a copy of his brief submitted in response to the Notice of Intent to Deny.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 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).

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.

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. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- An affidavit from [REDACTED] of Passage to India in New York, who indicated that the applicant was employed at the restaurant as a kitchen helper from March 1988 to June 1995.

An additional affidavit from [REDACTED] who attested to the applicant's absence from the United States from June 25, 1987 to July 29, 1987 and to the applicant's residence during the requisite period. The affiant asserted that he was a former neighbor of the applicant.

- An affidavit from [REDACTED], [REDACTED] in New York, which attested to the applicant's employment as a bus boy from February 1986 to February 1988.
- An affidavit from [REDACTED], manager of [REDACTED] in New York, who indicated that the applicant was employed as a bus boy from April 1982 to January 1985.
- A letter from [REDACTED], in North Miami Beach, Florida, which attested to the applicant's employment as a helper from August 4, 1981 to January 3, 1982.
- An affidavit from [REDACTED], who indicated that he has known the applicant since March 1982.
- An affidavit from [REDACTED] who indicated that the applicant resided with him at [REDACTED], New York, New York from March 1982 to March 1988.

An affidavit from [REDACTED] of Plantation, Florida, who indicated that the applicant resided with him at [REDACTED], Miami, Florida from August 1981 to January 1982.

An affidavit from [REDACTED] of Brooklyn, New York, who indicated that he has been acquainted with the applicant since 1981. The affiant asserted at that time he was the president of [REDACTED] and the applicant performed religious prayers at the Islamic Council at [REDACTED], New York.

- An affidavit from [REDACTED] who indicated that he first met the applicant in 1981 at his restaurant at [REDACTED] between [REDACTED]. The affiant indicated that he met the applicant two to three times a week as the applicant resided next to his restaurant. The affiant also indicated that he and the applicant met at the

[REDACTED] at [REDACTED] to perform weekly prayer almost every week.

- An affidavit from [REDACTED] of Montreal, Canada, who attested to the applicant's visit from June 25, 1987 to July 29, 1987.
- An affidavit from [REDACTED] of New York, New York, who indicated that he has known the applicant since March 1982 and that the applicant resided with him at 16 New York, New York from April 1988 to December 1994.
- An affidavit from [REDACTED] president of Islamic Council of America, Inc. in New York, New York, who indicated that the applicant has been a member since 1981.
- A letter dated October 22, 2003, from [REDACTED] vice-president of [REDACTED] [REDACTED], who indicated that during the time (1982 to 1986) he was Iman he used to see the applicant come to the Masjid for prayer and since 1982, the applicant has been a regular member of the council.
- A statement dated September 9, 2003, from [REDACTED], a medical doctor in New York, who indicated that the applicant was seen on February 5, 1985 and December 10, 1987.

On August 13, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that he had failed to submit any evidence of his 1981 entry into the United States. The applicant was advised that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was advised that the letter from [REDACTED] was not notarized and did not include a legible signature. The applicant was also advised of inconsistencies between his applications. Specifically, the applicant indicated on his Form I-687 application to have last entered the United States on July 29, 1987 through the Canadian border; however, on his LIFE application and Form I-765, Employment Authorization, dated December 24, 2001, and an affidavit dated December 20, 2001, the applicant indicated that he last entered the United States on July 29, 1987 through the Miami, Florida border.

The director, in denying the application on September 19, 2007, noted that the applicant failed to submit a rebuttal to the Notice of Intent to Deny.

A review of the record reflects that a response was received prior to the issuance of the director's Notice of Decision. The response will be considered on appeal.

In response, the applicant argued that the director's findings were speculative, untrue and unfair. The applicant indicated that the discrepancies or inconsistencies noted by the director were "of very minor nature." Regarding his 1981 entry, the applicant asserted that it is not possible to substantiate an entry which was without inspection. The applicant stated that neither he nor the affiants were aware of the criteria to draft affidavits in connection with the LIFE application, and that the affidavits submitted were credible documents constituting a preponderance of evidence to his residence in the United States during the requisite period. Regarding the letter from R.K.

Auto, the applicant asserted that the letter, which listed its address and telephone number was issued over 14 years ago; however, the company was no longer in business. The applicant asserted that he had no lease agreements or rent receipts because he always shared apartments with other individuals. The applicant argued that the director had no adverse evidence to disprove the credible affidavits submitted in support of his claim. Regarding his last entry into the United States, the applicant asserted that the preparer of his LIFE application, Form I-765 and affidavit “made an error in mentioning the port of entry at the time of my re-entry after a brief travel outside the United States....” The applicant submitted photocopies of [REDACTED] Certificate of Naturalization and New York State identification card.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented inconsistent documents, which undermines his credibility.

The employment letter and affidavits failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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. Further, as the signatures on the letter from R.K. Auto and the affidavit from Clay Oven are indecipherable and the individuals' names are not indicated, it raises questions regarding whether the signatures are that of individuals who were authorized and affiliated with the company.

in his initial affidavit, attested to the applicant's employment at Passage of India from March 1988 to June 1995, but did not indicate his affiliation with the restaurant. In his subsequent affidavit, the affiant indicated, “I formerly was the neighbor” of the applicant and made no mention of having any association with the applicant's employment. As inconsistent statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the inconsistencies. However, no statement from [REDACTED] has been submitted to resolve the inconsistent statements. As such, [REDACTED]'s affidavits have little probative value or evidentiary weight.

The affidavits from [REDACTED] and [REDACTED] and the letter from [REDACTED] have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, [REDACTED] and [REDACTED] do not explain the origin of the information to which they attest. Further, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

The applicant claims that the preparer of his LIFE application made an error in mentioning the Miami, Florida port of entry as his last re-entry. The LIFE application, however, does not reflect that anyone other than the applicant completed the application, as no information is listed at part 5 of the application; part 5 of the application requests the name, address and signature of the person preparing the form.

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 provided by the applicant, 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.