



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC 02 198 60098

Office: CHICAGO

Date: JAN 28 2008

IN RE: Applicant: [Redacted]

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:

[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 your case 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, Chicago, and is now before the Administrative Appeals Office 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 since before January 1, 1982 through May 4, 1988. Specifically, the director found that affidavits submitted by the applicant were insufficient to overcome the "utter lack of primary and secondary evidence" in the record. The director also found that the applicant submitted employment letters which appeared to be fraudulent. This finding was based on documentation from the Illinois Department of State showing that the applicant's claimed employer from 1984 until 1989 was not incorporated until 1992 or 1993.

On appeal, counsel for the applicant asserts that the applicant has obtained documentation from the Illinois Department of Revenue to overcome the director's determination that the employment letter submitted appeared to be fraudulent. The new evidence establishes that the employer that provided the letter, although not incorporated until 1992, previously existed as a partnership formed in 1976.

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).

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).

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 issue in this matter is whether the applicant has continually resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

The record contains the following documents submitted in support of the applicant's claim that he has continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988:¹

¹ The evidence listed includes evidence provided in support of the applicant's applications for temporary resident status filed in 1990 and 2005, as well as evidence submitted in support of the instant applicant to adjust status under the LIFE Act.

1. Color photocopies of an Illinois Identification Card issued to the applicant on December 29, 1978, and an Illinois Drivers License issued to the applicant on December 20, 1979.
2. A copy of the applicant's U.S. Social Security Card. The date of issuance cannot be determined, but it is noted that the card is printed on a version of Form OA-702 dated April 1976.
3. Copies of two savings account books (First National Bank of Chicago, Account # [REDACTED] showing the applicant's account activity from June 5, 1979 through December 15, 1980, and from December 19, 1980 through July 27, 1981, respectively.
4. Copies of customer statements issued to the applicant by the First National Bank of Chicago, dated August 12, 1982 and July 19, 1982, for two different 6-month certificates of deposit.
5. A notice dated November 10, 1980, from the First National Bank of Chicago, regarding a certificate of deposit with a maturity date of May 20, 1981.
6. A copy of pages 6 and 7 of the applicant's Pakistani passport number [REDACTED] which bears a stamp indicating that he previously traveled on passport number [REDACTED] issued in New York on November 7, 1980.
7. Four original cancelled checks written by the applicant from an account with The First National Bank of Chicago ([REDACTED] in March 1982, and a copy of a check written from this account in April 1982.
8. Three original envelopes addressed to the applicant's [REDACTED] address, bearing Pakistani stamps and postmarks. The envelopes have postmarks of April 1984, June 7, 1985, and August 3, 1985.
9. A First National Bank of Chicago Bank Statement for account number [REDACTED] issued to the applicant, for the period January 6, 1987 until June 30, 1987, and showing a balance of \$22.19.
10. A notarized letter from First National Bank of Chicago, dated July 3, 1990, indicating that the applicant has had a checking account with the bank since December 14, 1981, with a balance of \$225.70.
11. A notarized letter dated January 12, 2005 from [REDACTED], who states that he has known the applicant as a friend for the last 20 years and that he was introduced to him by a mutual friend.
12. A notarized letter dated January 12, 2005 from [REDACTED] who states that he first met the applicant in January 1984 at a community gathering, and that he has been good friends with him since that time.

It is noted that neither of these affiants have provided proof of their identity, evidence that they resided in the United States during the requisite time period, or a telephone number at which they can be reached for verification. Neither affiant states with any specificity how they date their initial acquaintance with the applicant, where or under what circumstances they met him, whether they have direct, personal knowledge of where the applicant was living during the requisite time period, or how frequently they had contact with the applicant during the requisite period. The lack of detail regarding the events and circumstances of the applicant's residence is significant given each affiant's claim to have a friendship with the applicant spanning 20 or more years. For these reasons, these affidavits have very limited probative value as evidence of the applicant's continuous residence in the United States since 1984-1985.

13. A letter dated April 28, 2003 from [REDACTED] president of [REDACTED] [REDACTED] states that the applicant worked in "our two branches" as a salesperson as follows: [REDACTED] September 1984 to April 1987; [REDACTED] October 1987 to April 1989; and [REDACTED] April 1992 to September 2000. Based on [REDACTED] statement, the applicant had a six-month gap in employment between April 1987 and October 1987. The applicant indicates that he worked for [REDACTED] from September 1984 until August 1987, before commencing employment with [REDACTED] in October 1987. This discrepancy has not been explained. Although the statement is on company letterhead, it is not notarized. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; his duties with the company; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by [REDACTED] does not include much of the required information and can be afforded limited weight as evidence of the applicant's residence in the United States from September 1984 until the end of the requisite period.

Other than this letter, the applicant has not provided any evidence of his employment with [REDACTED] or [REDACTED]. The AAO finds this lack of evidence significant in light of the fact that the applicant does have a U.S. social security number issued prior to 1984 and claims to have maintained a bank account throughout the 1980s. These circumstances suggest that the applicant was not in a situation where he would have been paid in cash with no payroll or tax records maintained by himself or by his employer. The lack of documentary evidence related to this employment, viewed together with noted deficiencies of the employment letter, raises questions regarding the credibility of the applicant's claim of employment.

There is one additional document in the record that appears to be a bank account book for account number [REDACTED]. The name of the bank and the name of the account holder are not identified. The document shows account activity from April 1983 through February 1984, followed by a deposit on July 6, 1990; however, since this document is not clearly associated with the applicant, it has no probative value and will not be considered.

The director issued a notice of intent to deny (NOID) the application on December 20, 2004, advising the applicant that he lacked sufficient documentation to establish that he resided in the United States between July 1985 and May 4, 1998. Specifically, the director questioned the credibility of the employment letter signed by [REDACTED] based on a finding that the two businesses referenced, [REDACTED] and [REDACTED] were not incorporated until April 1992 and April 1993. The director also found no evidence that [REDACTED] was associated with either business. The director further noted that there was no primary or secondary evidence to establish the applicant's claim of continuous residence from July 1985 until May 4, 1988.

The applicant's response to the NOID, dated January 12, 2005, included the above-referenced affidavits from [REDACTED] and [REDACTED] and a certificate of registration issued by the State of Illinois to [REDACTED] and [REDACTED] for a business known as [REDACTED]. The certificate of registration was not dated. The applicant explained that the full name of [REDACTED] apparently also known as [REDACTED] is "[REDACTED]."

The director denied the application on March 7, 2005, noting that the evidence submitted in response to the NOID was insufficient to overcome the stated grounds for denial. The director found that the affidavits from [REDACTED] and [REDACTED] were vague and make no reference to the relevant period, and thus had no evidentiary value. The director further found that the applicant had not overcome the director's finding that the applicant's claimed employers, [REDACTED] and [REDACTED] were not incorporated at the time the applicant claims to have worked for them. The director therefore concluded that there was no primary or secondary evidence to establish the applicant's claim of continuous residence from July 1985 through May 4, 1988. The director also found that the applicant presented a fraudulent employment letter in support of his claim.

On appeal, counsel for the applicant addresses the director's finding that the employment letter was fraudulent by presenting evidence from the Illinois Department of Revenue showing that [REDACTED] existed as a partnership dating back to 1976.

Upon review, the AAO concurs with the director's decision. The AAO will withdraw the director's determination that the employment letter was fraudulent. However, for the reasons discussed above, the employment letter lacks probative value and is insufficient to establish the applicant's residence in the United States during the claimed period of employment.

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. at 79-80. In evaluating the evidence, *Matter of E-- M--* also stated that "[t]ruth is to be determined not by the quality 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 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.

Here, the submitted evidence is not relevant, probative, and credible.

The record contains sufficient primary evidence of the applicant's residence in the United States during the 1978 to 1982 period. Although the director only questioned the applicant's evidence for the period between July 1985 and May 4, 1988, it is noted that the secondary evidence submitted to establish the applicant's residence in the United States, particularly for the 1983 to 1988 period, is significantly lacking in probative value. There is no primary or secondary evidence suggesting that the applicant was in the United States in 1983. Such claim is based solely on the applicant's own testimony. The evidence submitted for 1984 and beyond consisted of two affidavits from third-party individuals, one employment verification letter, and three envelopes postmarked in 1984 and 1985. The affidavits and employment letter lack probative value for the reasons noted above, and the three envelopes, two of which are dated more than 14 months apart, are insufficient to establish the applicant's continuous residence during the 1984 to 1985 period.

Given the absence of contemporaneous documentation for the entire period, and the reliance on affidavits and an employment letter which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Therefore, 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.