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FILE:



MSC 01 320 60236

Office: NEW YORK

Date: JUL 09 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. 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.

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 (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director did not properly consider the evidence in the record and reiterates the applicant's claim to have resided in the United States continuously in an unlawful status since 1981.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. *See* 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 applicant, a native of Pakistan who claims to have lived in the United States since May 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 16, 2001. At that time he submitted the following documentary evidence of his residence in the United States during the 1980s:

- An affidavit by [REDACTED], a resident of Corona, New York, dated July 14, 2001, stating that he met the applicant in December 1981 at a religious gathering in his former house in Jersey City, and visited the applicant at Shaheen Restaurant in Jackson Heights, New York, in 1982. Mr. [REDACTED] further stated that the applicant has lived continuously in the United States since then, while making a few family visits to Pakistan, and that he greeted the applicant upon his return to the United States from a visit to Pakistan in July 1987.
- An affidavit by [REDACTED], a resident of Corona, New York, dated July 27, 2001, stating that he met the applicant in June 1981 at Shaheen Restaurant in Jackson Heights, that they became friends, and that he drove the applicant to JFK Airport in June 1987 for a trip to Pakistan and picked him up when he returned to the United States in July 1987.

A sworn statement by [REDACTED] the imam at Masjid Alfalah in Corona, New York, dated July 27, 2001, stating that the applicant has been attending prayer services since 1981.

A sworn statement by [REDACTED], the president of Shaheen Int'l Inc., undated but clearly from the summer of 2001, stating that the applicant was employed by the business (a restaurant) from July 1981 to August 1985.

The applicant had previously submitted another affidavit in support of an application for temporary resident status (Form I-687) in April 1990, specifically:

- An affidavit by [REDACTED] a resident of Chicago, Illinois, dated April 5, 1990, stating that he was a cousin of the applicant's, had known him since 1981, knew that the applicant had been a continuous resident of the United States since 1981, and knew that he made a family trip to Pakistan in June/July 1987.

On September 25, 2006, the director issued a Notice of Intent to Deny (NOID), citing some inconsistencies between the applicant's oral testimony at his interview for LIFE legalization on October 14, 2003 and agency records, including information provided by the applicant in his Form I-485 and Form I-687. The director also pointed out some infirmities in the affidavits of record, including information from Mr. [REDACTED] of Shaheen Restaurant that he never issued an employment letter to the applicant. The applicant was granted 30 days to submit additional evidence.

In response counsel offered explanations for some of the evidentiary inconsistencies cited in the NOID and asserted that the director should have given more credence to the affidavits. Counsel submitted a statement from the applicant which also addressed some of the evidentiary inconsistencies, and acknowledged that no primary documentation was available to prove his residence in the United States during the years 1981-1988. The applicant submitted another letter from the president of Shaheen Int'l Inc., dated October 23, 2006, stating that two employees with the applicant's name had worked for his restaurant, and he did not know which one he had provided information about in his previous statement from 2001. Counsel also submitted photocopies of the applicant's passports between 1989 and 2003, as well as some passport documentation relating to one of the affiants.

On November 6, 2006, the director issued a Notice of Decision denying the application. The director found that the applicant's rebuttal and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. The director concluded that the evidence of record failed to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, counsel asserts that the director's findings are not reasonably grounded in the record. Counsel contends that the director never attempted to contact the affiants [REDACTED] and [REDACTED], or [REDACTED] but this contention is clearly refuted by documentation in the record.¹ Counsel indicates that [REDACTED], the imam at Masjid Alfalah, refuses to submit a supplemental statement, and submits a statement to this effect from the applicant. Counsel reiterates his claim that the director did not properly consider the applicant's affidavit evidence, which he claims is sufficient to establish the applicant's eligibility for LIFE legalization.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite time period for LIFE legalization. For someone claiming to have lived and worked in the United States since May 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

The affidavits from [REDACTED], and [REDACTED] provide few details about the applicant during the years 1981-1988. Though each of the affiants claims to have known the applicant since 1981, they provide almost no information about his life in the United States and their interaction with him over the years. None of the affiants indicates where the applicant was living, much less provides a specific address for him, during the 1980s. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

¹ The burden does not rest with the director to make multiple efforts to contact affiants. Rather, the burden rests with the applicant to have his affiants produce reliable, probative evidence. This the applicant failed to do with respect to [REDACTED] and [REDACTED] by not adhering to the request of the interviewing officer at the interview for LIFE legalization in October 2003 (noted subsequently in the NOID) to bring one or both of the affiants to the district office to clear up some uncertainties in their affidavits.

The employment letters from [REDACTED] do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they do not provide the applicant's address at the time of his reputed employment at the Shaheen Restaurant, do not declare whether the information was taken from company records, and do not indicate whether such records are available for review. The credibility of the applicant's claim to have worked at the restaurant is further undermined by inconsistent information from the owner – who submitted a sworn statement in 2001 that he employed the applicant from 2001 to 2005, then in a subsequent telephone conversation on October 14, 2003 (the date of the applicant's LIFE legalization interview) denied having issued an employment letter to the applicant, and finally, on October 23, 2006, submitted another letter indicating that he had two former employees by the name of [REDACTED] and was not sure which is the applicant in this proceeding.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). In this case, the applicant has not satisfactorily explained the inconsistent information obtained from Mr. Hamid.

Due to the multiple infirmities discussed above, the employment letters have little evidentiary weight. Furthermore, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

In a similar vein, the sworn statement from [REDACTED], the imam of Masjid Alfalah, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. [REDACTED]'s statement, dated July 27, 2001, is vague about when the applicant began attending services, providing only a year (1981) without further detail. The statement does not state where the applicant lived at any point in time between 1981 and 1988. The statement does not indicate how and when [REDACTED] met the applicant, and whether the information about his attending services since 1981 is based on the imam's personal knowledge, mosque records, or hearsay. Since [REDACTED]'s statement does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the statement has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required

under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.