



U.S. Citizenship  
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FILE:

MSC 02 211 62053

Office: NEW YORK

Date: JUL 16 2008

IN RE: Applicant:



APPLICATION:

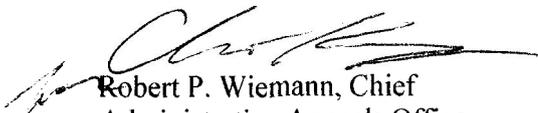
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.

  
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 denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status since that date through May 4, 1988. Specifically, the director noted that on his Form G-325A, Biographic Information, the applicant indicated that he resided in Bangladesh from 1961 to 1987.

On appeal, the applicant asserts that he erroneously believed that the Form G-325A required him to provide all of his residences outside the United States that in sum totaled more than twelve months.

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 or 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)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

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 entered the United States before January 1, 1982, and continuously resided in an unlawful status in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In the Notice of Intent to Deny (NOID), dated October 24, 2006, the director stated that the applicant failed to submit credible and verifiable evidence to substantiate his claim of continuous unlawful residence in the United States during the requisite period. Based on his own affidavit, dated April 29, 1992, the applicant stated that he first entered the United States on February 7, 1981. He stated that he resided in the United States until his visit to Bangladesh from June 28, 1987, to July 25, 1987. The director noted a discrepancy in the applicant's Form G-325A. The applicant stated that he resided outside the United States from his birth in May 1961 until July 1987. The director determined that the applicant failed to submit credible documents to meet his burden of proof. In response to the NOID, the applicant submitted additional evidence, but failed to address the noted discrepancy. In the Notice of Decision, dated November 30, 2006, the director denied the instant applicant based on the reasons stated in the NOID.

On appeal, the applicant asserts that the information on his Form G-325A was a mistake because he misunderstood the question. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO does not find the applicant's explanation to be sufficient as he submitted no independent objective evidence to reconcile the above inconsistency.

The record also contains a Form I-687, Application for Status as a Temporary Resident, signed by the applicant on April 29, 1992. In his Form I-687, Question 33, the applicant was asked to list all of his residences in the United States since his first entry. The applicant stated that he resided at [REDACTED] from June 1981 to August 1984. He failed to provide his place of residence from September 1984 through May 1988. At Question 36, the applicant was asked to list his employment in the United States since first entry. He stated that he was employed at Regina Restaurant as a cook helper from February 1982 through September 1985. The record contains an affidavit from [REDACTED], manager at Regina Restaurant. Mr. [REDACTED] stated that the applicant worked as a cook helper from February 1982 to September 1985. However, the applicant did not indicate any employment for the remainder of the statutory period. Taking the responses to both questions into account, the applicant has failed to account for his residence in the United States from October 1985 through the remainder of the statutory period.

Several individuals submitted affidavits attesting to the applicant's presence in the United States during the statutory period. While the affidavits corroborate the applicant claimed entry in 1981, they fail to provide sufficient details regarding the applicant's place of residence throughout the duration of the statutory period.

The record contains an affidavit from [REDACTED] who stated that he entered the United States on February 10, 1968 and subsequently became a naturalized U.S. citizen. The affiant stated that he was involved with the Madina Mosque of Islamic Council of America, Inc., and once president of the Council. He stated that he has known the applicant since 1982 and the applicant used to perform his prayer at the Mosque. The affiant provided his contact information. This affidavit reaffirms the affiant's previous affidavit, dated April 19, 2002. The affiant failed to indicate the applicant's place of residence during the statutory period. It is also inconsistent with the applicant's Form I-687, Question 34, where the applicant was asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc. The applicant failed to list the above organization. This discrepancy brings into question the credibility of the affidavit.

The record contains an affidavit, dated November 15, 2006, from [REDACTED], who stated that he first entered the United States on June 16, 1981 and subsequently became a naturalized U.S. citizen. This affidavit reaffirms the affiant's previous affidavit, dated April 22, 2002. In the previous affidavit, the affiant stated that he was one of the owners of Shayamolima Grocery Shop, where the applicant worked as a manager until August 1997. The affiant stated that applicant resided in United States since the early eighties. The affiant failed to provide the date the applicant began employment, the applicant's address at the time of employment, 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 the regulation at 8 C.F.R. § 245a.2(d)(3)(i). It is also noted that the applicant failed to list this employment in his Form I-687. The lack of details in the affidavit and inconsistency with the applicant's Form I-687, detract from the credibility of the affidavit.

The record contains an affidavit from [REDACTED], who stated that he entered the United States in the middle of 1980 and subsequently became a naturalized U.S. citizen. The affiant stated that the applicant arrived in the United States in February 1981. The affiant worked at Shaymoli Restaurant and the applicant came looking for a job. The affiant stated that he started his own grocery store and the applicant would shop there. The affiant failed to specifically state that the applicant resided in the United States at any time other than in 1981. Therefore, this affidavit has only limited probative value.

The record contains an affidavit from [REDACTED], secretary of Islamic Council of America, Inc., who stated that he has personal knowledge that the applicant would come to the Mosque to say his prayers. The affiant failed to indicate dates of membership, state the address where the applicant resided during membership period, establish how the author knows the applicant, and establish the origin of the information being attested to. The affidavit provides no probative value.

The record contains an affidavit from [REDACTED] general secretary of the Bangladesh Student League, who stated that the applicant has been a member from 1982 to 1986. The affidavit is inconsistent with the applicant's Form I-687, which failed to state any affiliation with this organization. In addition, the affiant failed to state the address where the applicant resided during membership period, establish how the author knows the applicant, and establish the origin of the information being attested to as required under the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The discrepancy with the applicant's Form I-687 and lack of sufficient details detract from the credibility of the affiant.

The record contains an affidavit, dated April 28, 1992, from [REDACTED], who stated that the applicant has resided with him at [REDACTED], from June 1981 to August 1984. He also stated that the rent receipts and household bills were in his name and the applicant contributed toward payment of bills. This affidavit was affirmed by another affidavit, dated April 29, 1992. The affiant listed the applicant's place of residence through the present, but failed to indicate where the applicant resided from September 1984 to May 1988.

The record contains a declaration from [REDACTED] editor at The Weekly Bangla Patrika. The declarant stated that he has personally known the applicant for a long time and attested to his good character. The declarant failed to provide any probative details to corroborate the applicant's claim.

Finally, the record contains an envelope addressed to the applicant from Bangladesh. The envelope is postmarked on January 25, 1986. One envelope alone does not indicate that the applicant continuously resided in the United States. In fact, the envelope is address to the applicant at [REDACTED] which is inconsistent with the statements of the applicant and his affiants. Both the applicant and his affiants have stated that the applicant resided at this address from 1981 to 1984. This inconsistency further detracts from the credibility of the applicant's claim.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Although the applicant has submitted numerous affidavits in support of his application, the affidavits contain several discrepancies which seriously bring into question the veracity of the applicant's claim. In addition, the applicant has failed to account for his place of residence from October 1985 through the remainder of the statutory period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Given the applicant's reliance upon documents with discrepancies and minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.