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FILE:



Office: NEW YORK

Date:

**MAY 05**

MSC 02 228 60551

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 [or Records] 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 continuously resided in the United States from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the director failed to consider all of the evidence submitted by the applicant and concluded without explanation that the applicant had entered the United States after May 4, 1988.

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.

“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.

Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.” The applicant has not submitted any evidence to establish that an emergent reason delayed her return to the United States.

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)(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.

In the Notice of Intent to Deny (NOID), dated on April 5, 2006, the director stated that the applicant failed to establish his entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no new evidence was received. In the Notice of Decision, dated on May 28, 2006, the director denied the instant applicant based on the reasons stated in the NOID.

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 since that date through May 4, 1988. Here, the applicant has failed to meet his burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act on January 15, 1992. In connection with his Form I-687, the applicant submitted his own affidavit stating that he first entered the United States on September 1981. The applicant reiterated this entry date in his Form for Determination of Class Membership. While the applicant’s Form I-687 is evidence to be considered in determining eligibility, the Form I-687 cannot by itself be sufficient to establish eligibility. To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony.

8 C.F.R. § 245a.2(d)(6). The record does not contain sufficient evidence to corroborate the applicant's claimed entry into the United States in September 1981.

In support of the applicant's continuous unlawful residence in the United States during the statutory period, the applicant submitted numerous affidavits and declarations.

The applicant submitted declarations from [REDACTED]s and [REDACTED]n. Mr. [REDACTED], manager of The Farm Restaurant and The Farm Motel, stated that the applicant worked at his restaurant as a dishwasher from 1981 through 1985. He provided the restaurant's business address and telephone number. Ms. [REDACTED]n stated that the applicant worked for her, taking care of her house in general, from 1986 to 1991. She provided her address of residence. Neither affiant provided the applicant's address at the time of employment, showed periods of layoff, declared whether the information was taken from company records, and identified 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). The lack of details detracts from the credibility of the declarant.

The record contains a January 6, 1992, declaration by [REDACTED] who certified that the applicant came to the United States in 1981. The declarant provided his address of residence. The declarant failed to include any detailed information about how he dated his acquaintance with the applicant, how he met the applicant or how frequently he saw the applicant. Although not required, the declaration failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The lack of details detracts from the credibility of the declarant.

The record contains a January 2, 1992, declaration by [REDACTED], who certified that the applicant lived with him since 1981 and paid his share of the rent every first of the month. The declarant provided his address of residence. The record also contains an affidavit by [REDACTED] dated on February 25, 2002. Mr. [REDACTED] stated that the applicant and [REDACTED] lived at his house at [REDACTED], Richmond, Virginia 23222 from 1981 to 1988. The affiant provided his address of residence. Neither Mr. [REDACTED] nor Mr. [REDACTED] provided any supporting documentation, such as rent receipts, lease agreements, household bills, etc. Although not required, neither one provided any supporting documentation of their presence in the United States during the requisite period. The lack of details detracts from the credibility of the declarant and affiant.

The record contains an affidavit by [REDACTED], dated on January 25, 2002. Mr. [REDACTED] stated that he has been friends with the applicant since November 1981. The affiant stated that he became familiar with the applicant through his visits to teach and pray at his Masjid. The affiant provided his address of residence, business address and business telephone numbers. The affiant failed to include any detailed information about how he dated his acquaintance with the applicant or how frequently he saw the applicant. Although not required, the affiant also failed to include any supporting documentation of his own presence in the United States during the requisite period. The lack of details detracts from the credibility of the affiant.

The record contains an affidavit by [REDACTED], dated on March 13, 2002. Mr. [REDACTED] stated that he has personally known the applicant for a long time. The affiant stated that the applicant used to reside at [REDACTED], Richmond, Virginia, 23222. The affiant stated that he used to visit the applicant at this address from 1983 to 1991. The affiant provided his address of residence. The affiant failed to provide any specific dates regarding the applicant's presence in the United States. The affiant failed to include any detailed information about how he dated his acquaintance with the applicant, how he met the applicant, or how frequently he saw the applicant. Although not required, the affidavit failed to include any supporting documentation of the affiant's presence in the United States during the requisite period. The lack of details seriously detracts from the credibility of the affiant.

The record contains a notarized declaration by [REDACTED] dated on March 15, 2002. Mr. [REDACTED] stated that he has known the applicant since November 1981. The declarant stated that the applicant resided at [REDACTED], Richmond, Virginia, 23222 from 1981 to 1988, and then moved to [REDACTED], Alexandria, Virginia. The declarant provided his address of residence and telephone number. The declarant failed to include any detailed information about how he dated his acquaintance with the applicant, how he met the applicant, or how frequently he saw the applicant. Although not required, the declaration failed to include any supporting documentation of the declarant's presence in the United States during the requisite period. The lack of details detracts from the credibility of the declarant.

The record includes affidavits by [REDACTED] and [REDACTED]. Both of the affiants stated that they have known the applicant since 1981. Both of the affiants stated that the applicant resided at [REDACTED], Richmond, Virginia, 23222 from 1981 to 1988, and then moved to [REDACTED], Alexandria, Virginia. Both of the affiants provided their addresses of residence. Neither of the affiants failed to include any detailed information about how they dated their acquaintance with the applicant, how they met the applicant, or how frequently they saw the applicant. Although not required, neither affidavit included any supporting documentation of the affiants' presence in the United States during the requisite period. The lack of details seriously detracts from the credibility of the affiants.

Finally, the record contains an affidavit by [REDACTED], Imam/Director of Masjid Al-Jamiyah, dated on March 18, 2002. The affiant stated that he came to know the applicant through their mutual belief in Islam. The affiant stated that in 1981 the applicant spoke at a conference in Virginia that he attended. The affiant invited the applicant to teach and lead Islamic studies at his mosque. The affiant stated that the applicant has visited our community an average of three or four times per year since November 1981 to the present. The affiant provided the applicant's addresses of residence during the requisite period. The affiant also provided his address of residence. It is noted that he applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act on January 15, 1992. In his Form I-687, at Question #34, where asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant failed to state that he was affiliated with this Masjid. This discrepancy brings into question the credibility of the affiant.

Although the applicant has submitted numerous affidavits in support of his application, the applicant has not provided sufficient credible evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of entry into the United States before January 1, 1982, and continuous unlawful residence for the entire requisite period seriously detracts from the credibility of his 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. Given the applicant's reliance upon documents with 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.

In the NOID, the director also stated that the applicant failed to maintain continuous residence in the United States during the requisite period. The record contains an undated affidavit by the applicant, who stated that he resided in the United States until August 1987 when he went to Pakistan. The applicant stated that he remained in Pakistan until September 1987 when he returned to the United States. However, in his Form I-687, the applicant stated that he last came to the United States in December 1987. The applicant has contradicted his own statement. If the applicant returned in December 1987, his absence would have exceeded the forty-five (45) days permitted under the regulation at 8 C.F.R. § 245a.15(c)(1). There is no evidence in the record to establish an emergent reason may have delayed his return to the United States. Moreover, there is nothing in the record to explain this discrepancy. Therefore, the AAO concludes that the applicant has failed to meet his burden of establishing continuous unlawful residence in the United States for the duration of the entire requisite period.

Therefore, based on the above discussion, 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.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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