



U.S. Citizenship
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FILE: [REDACTED] Office: NEW YORK Date:
MSC 02 162 64258

MAY 19 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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, New York, 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. Furthermore, the director found the applicant in violation of section 212(a)(6)(C)(i) of the INA, which provides that “[a]ny alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.”

On appeal, the applicant provides three new affidavits in support of his application, and claims that documentation found to be fraudulent by the director is in fact legitimate. Although the applicant stated on his Form I-290B that he would file a brief with the AAO within 30 days, no additional documentation has been submitted.

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).

On Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on August 12, 1989, the applicant claimed that he resided at [REDACTED] Bronx, NY 10472 from June 1981 through the entire requisite period, and that he was self-employed as a “seller” during this time.

In an attempt to establish continuous unlawful residence from June 1981 to May 4, 1988 and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as claimed, the applicant furnished the following evidence:

- (1) Affidavit dated February 2, 2002 by [REDACTED], claiming that he knew the applicant from December 1981 to the present. Specifically, he claims to have met the applicant on Christmas Eve in 1981 during a party in Brooklyn.
- (2) Notarized letter dated August 24, 1989 by [REDACTED] and notarized on August 30, 1989, claiming that the applicant has been living at the same address since June 1981. He does not provide the applicant’s address nor does he provide any additional details.
- (3) Affidavit dated August 30, 1989 by [REDACTED] claiming that he has known the applicant since June 1981. Specifically, the affiant claims that he met the applicant in November 1981 when the applicant came to his shop looking for a job.

- (4) Affidavit dated August 30, 1989 by [REDACTED] claiming that he has known the applicant since June 1981. Specifically, he states that they met “during the holiday back in 1981” at his sister’s house and they have been friends ever since.
- (5) Invoice dated March 18, 1983 from [REDACTED], showing that the applicant purchased umbrellas and sunglasses in bulk.
- (6) Invoice dated June 10, 1984 from [REDACTED], showing that the applicant purchased men’s watches, women’s watches, and headphones in bulk.
- (7) Invoice dated May 11, 1985 from [REDACTED], showing that the applicant purchased handbags and umbrellas in bulk.
- (8) Original stamped envelope from Senegal addressed to the applicant at [REDACTED] with a postmark of December 19, 1987.
- (9) Original stamped envelope from Senegal addressed to the applicant at [REDACTED] with a postmark of September 25, 1984.

On October 5, 2005, CIS issued a Notice of Intent to Deny the application. The district director noted that despite the applicant’s claim that he continually resided in the United States since June 1981 with the exception of one trip to Senegal, the record did not contain credible evidence to support a finding that the applicant continuously resided in the United States from January 1, 1982 through May 4, 1988. The district director noted that the affidavits contained in the record lacked critical information, such as the knowledge upon which the information attested to by the affiants was based as well as the nature of the affiants’ relationships with the applicant. The district director also noted that the record contained a copy of the applicant’s National Identification card issued in Dakar on August 27, 1987. The director noted that the applicant claimed to have visited Senegal from June 2, 1987 to June 23, 1987. Noting that the identification card was issued two months after the applicant’s claimed return, the director concluded that the applicant’s statements regarding the duration of his trip to Senegal in 1987 were less than credible. The applicant was afforded 30 days in which to respond to the director’s notice and submit any additional evidence in support of the application.

In a response received on October 17, 2005, the applicant submitted copies of stamped mail addressed to him during the relevant period. With regard to the issuance of the identity card in Senegal in August 1987, the applicant claimed that it was issued in his absence and that his uncle brought it to him during one of his frequent trips to the United States. The applicant submitted the following documents:

- (10) Original stamped envelope from Senegal addressed to the applicant at [REDACTED] with a postmark of April 20, 1983.
- (11) Photocopies of the previously-submitted stamped envelopes dated December 19, 1987 and September 25, 1984.

The director denied the application on February 7, 2006. The director concluded that there was insufficient evidence to show that the applicant was unlawfully present in the United States from before January 1, 1982,

the beginning of the qualifying period, through May 4, 1988, nor was there sufficient evidence to show his continuous physical presence in the United States from November 6, 1986 to May 4, 1988. Finally, the director noted that the stamped envelopes submitted into evidence, which allegedly represented correspondence received by the applicant in 1983, 1984 and 1987, contained incorrect postage for the time periods prescribed. Consequently, the director found the applicant in violation of section 212(a)(6)(C)(i) of the INA for relying on fraudulent documents.

On appeal, the applicant claims that he mailed the copies of the envelopes to CIS only two weeks after the director's request in the NOID, thereby making it impossible for the documents to be fraudulent. In addition, the applicant submitted the following three affidavits:

- (1) Affidavit dated February 23, 2006 by [REDACTED], claiming that he has known the applicant for 20 years. He claims that the applicant is a friend and co-worker, but provides no additional details such as where they worked together.
- (2) Affidavit dated February 21, 2006 by [REDACTED], claiming that he has known the applicant since November 1981 when he met him on the corner of 181st Street and St. Nicholas Avenue in New York. The affiant claims that the applicant sold merchandise in front of the building he frequented when serving a particular client. He claims that he began having regular contact with the applicant in 1989, but provides no additional details regarding his relationship with the applicant during the relevant period.
- (3) Affidavit dated February 23, 2006 by [REDACTED] claiming that he has known the applicant since July 1985 at the corner of 181st Street and St. Nicholas Avenue, where the applicant sold merchandise in front of [REDACTED]'s building. [REDACTED] claims that his office hired the applicant as a security officer in 1989, but provides no additional details regarding his relationship with the applicant during the relevant period.

The first issue on appeal is whether the applicant has demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, as required by 8 C.F.R. § 245a.11(b).

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.

Here, the applicant has failed to meet his burden of proof.

Although the applicant claims to have first entered the United States in June 1981, he likewise claims that he entered without inspection. According to his Form I-687, he entered on June 16, 1981 through Buffalo. During his interview on March 22, 2004, he claims he entered the United States by bus, but does not remember anything except arriving in Times Square. Since the applicant entered without inspection, he has no documentation of his entry into the country, such as an arrival/departure record, a stamped passport, or affidavits from third party individuals who can attest to his entry.

In addition to having no documentation of his claimed 1981 entry, the applicant has minimal documentation pertaining to his continuous unlawful residence during the requisite period. Although he claims to have resided at the same address throughout the entire period, the applicant has submitted no evidence of his residence there, such as a lease agreement or utility bills. The only evidence pertaining to his residence at this address are the three stamped envelopes addressed to the applicant. However, these documents, for reasons discussed later in this decision, have been deemed less than credible. In addition to three receipts for commercial merchandise in 1983, 1984, and 1985, the applicant has submitted a total of seven affidavits from individuals claiming to have known the applicant in the United States.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e). The receipts submitted in this case are insufficient to demonstrate the applicant's continuous unlawful residence, since they represent only one purchase a year in 1983, 1984 and 1985. Absent additional evidence of his continuous presence in the United States during this period, these receipts alone are insufficient to meet the applicant's burden of proof. The only additional evidence, therefore, is the collection of third party affidavits.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The affidavits submitted in support of this application fall far short of meeting the above criteria. The affidavits of [REDACTED] and [REDACTED] are not supported by any objective, verifiable documentary evidence. Specifically, the affidavits of [REDACTED] claim that the applicant resided in the United States at [REDACTED] from June 1981 to the present. However, [REDACTED] claims that he first met the applicant in November 1981, and [REDACTED] claims he met the applicant during the holidays, but fails to specify what holiday. As a result, it is unclear how both affiants can verify the applicant resided in the United States since June 1981 if they did not meet him until November or December 1981. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Moreover, all of these affidavits fail to provide specific information, such as the basis for their acquaintance with the applicant and the origin of the information to which they attest. Merely claiming that they met the applicant on one occasion years ago, without providing more information regarding the nature of their relationship and the frequency of their contact, is insufficient to establish that the applicant continually resided in the United States in an unlawful manner during the requisite period.

On appeal, the applicant submitted three new affidavits, two of which attested to the applicant's presence as a street vendor on the corner of 181st Street and St. Nicholas Avenue in New York in 1981 and 1985. These affidavits, executed by [REDACTED] and [REDACTED] provide no additional details or information regarding the frequency of their contact with the applicant. In addition, these two affidavits attest to the relationships of the affiants with the applicant in 1989 and thereafter, which is outside the requisite period. Finally, the affidavit of [REDACTED] merely claims that he has known the applicant for 20 years and that they have been co-workers. He provides no details regarding where they worked together or where the applicant resided during the requisite period. In addition, the date of Jone Home's letter does not match the date of notarization. This inconsistency casts doubt on the credibility of the letter.

In the notice of intent to deny the application, the director noted that the applicant claimed one twenty-one day absence from the United States from June 2, 1987 until June 23, 1987. The director further noted that the applicant's National Identification card, a copy of which is contained in the record, was issued in Dakar on August 27, 1987, nearly two months after the applicant's alleged return to the United States. The director concluded that based on this document, the applicant must have been in Senegal on August 27, 1987, thereby rendering himself ineligible to adjust to permanent resident status.

According to the regulation at 8 C.F.R. § 245a.15(c)(1), no single absence from the United States can exceed forty-five days without interrupting continuous residency. Therefore, if the director's findings are correct, the applicant would have been absent from the United States for a period of at least 85 days, thereby easily exceeding the 45 day limit for a single absence. When asked for evidence to refute this finding, the applicant merely stated that he applied for the card in June 1987, and it was issued to him after his departure. He claimed that his uncle brought the card to him on one of his frequent trips to the United States. However, the record contains no documentary evidence to corroborate this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden

of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant has submitted one receipt from 1983, one receipt from 1984, and one receipt from 1985, in addition to seven affidavits which do not meet the minimal evidentiary standards. The applicant has submitted no other documentary evidence, including but not limited to utility bills, hospital or medical records, bank books with dated transactions, money order receipts for money sent out of the country, receipts, or contracts to which the applicant has been a party dated prior to 1982.

Given the limited contemporaneous documentation and the reliance on affidavits 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.

The director also found the applicant in violation of section 212(a)(6)(C)(i) of the INA, which provides that “[a]ny alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.” Specifically, upon careful examination of the three original stamped envelopes addressed to the applicant, the director found that the envelopes were “deceitfully created or obtained,” since they have a postage that greatly differs from the dates stamped on them.

Upon review, the AAO concurs with the director’s findings. The applicant purports that these envelopes represent mail received by him from Senegal at his Bronx, New York address in 1983, 1984 and 1987. However, a review of the stamps included on each envelope clearly indicates that the origin date of the stamps used is 2002. As stated above, when an alien seeks to procure a visa, other documentation, or admission into the United States or other benefit provided under this Act by fraud or willfully misrepresenting a material fact, he is inadmissible under section 212(a)(6)(C)(i) of the INA. For this additional reason, 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.