



U.S. Citizenship
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Services

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FILE: [Redacted] Office: NEW YORK Date: **MAY 23 2008**
MSC 02 114 60178

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. 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, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed with a separate finding of fraud and inadmissibility.

The 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, or that he was admissible to United States.

On appeal, counsel asserts that the applicant had submitted “ample documents and statements,” and testified to their bona fides and credibility, to establish his eligibility to adjust to status under the LIFE Act.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(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 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 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.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any 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.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which “tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.” *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

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).

In an affidavit to determine class membership, which he signed under penalty of perjury on September 5, 1996, the applicant stated that he first arrived in the United States in October 1980, when he crossed the border without inspection. On his Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on September 5, 1990, the applicant stated that he had one absence from the United States during the qualifying period, from August 10 to September 6, 1984, when he traveled to Bangladesh for a visit.

The applicant also stated on his Form I-687 application that during the qualifying period, he lived at [REDACTED] in New Milford, Connecticut from October 2, 1980, to January 31, 1983; at [REDACTED] in Stamford, Connecticut from February 1983 to July 1984, and again from October 1984 to March 1990. The applicant reaffirmed these addresses in a supplemental statement submitted with his Form I-485, Application to Register Permanent Resident or Adjust Status. The applicant stated that he worked as a dishwasher with the Holiday Restaurant in New Milford from October 1980 to January 1983, and as a “pizzaman” at Lucy’s Pizza Parlor in Stamford from October 2, 1984, to March 31, 1990. In block 34 of the Form I-687 application, the applicant denied any affiliation with a church, club or other organization.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant submitted the following evidence:

1. An April 20, 1990, notarized statement, from [REDACTED] in which he certified that the applicant lived with him at [REDACTED] in New Milford from October 2, 1980, to January 31, 1983, and that he worked with the applicant at the Holiday Restaurant in New Milford. In an undated notarized statement signed by Mr. [REDACTED] who identified himself as the “secretary” of [REDACTED] at [REDACTED] in Stamford, Mr. [REDACTED] certified that the applicant worked in [REDACTED] from February 1983 to July 1984, and from October 1, 1984, to March 1990. Mr. [REDACTED] further stated that the applicant lived with him in Mr. [REDACTED] “own residence” at [REDACTED] in Stamford during the “duration” of his work. Mr. [REDACTED] also executed an affidavit on December 27, 2001, in which he again stated that the applicant lived with him at [REDACTED] in New Milford from October 2, 1980, to January 31, 1983 and worked with him at the Holiday Restaurant.
2. A copy of an apartment lease showing the tenants as [REDACTED] and [REDACTED] and the landlord as [REDACTED]. The address is listed as [REDACTED] Avenue in New Milford, Connecticut, with the lease to run from October 1, 1980, to April 30, 1981. The applicant submitted copies of money order receipts dated in 1981, indicating that they were made payable to C. B. Properties and were remitted by [REDACTED]. The applicant also submitted a copy of a letter written by [REDACTED] apparently to the management of the apartment building on [REDACTED] in the letter, [REDACTED] indicated that he vacated the apartment in April 1981 and gave his new address as a post office box in New Milford. This letter contradicts the statements provided by the applicant and [REDACTED] in which they stated that the applicant lived with Mr. [REDACTED].

at the [REDACTED] address through January 1983, at which time they moved to [REDACTED] in Stamford.

3. A copy of an undated statement from [REDACTED], in which she stated that she had known the applicant since 1981, and that he "is very nice and courteous to passengers in the taxi." Ms. [REDACTED] did not give her complete address and did not state the circumstances under which she met the applicant. We note, however, that on a Form G-325 A, Biographic Information, which he signed under penalty of perjury on April 9, 1995, and submitted in conjunction with his Form I-485, application as a spouse of a lawful permanent resident, the applicant stated that he had been a taxi driver since March 1990.
4. A copy of a January 11, 2001, notarized statement indicating that the writer had known the applicant since 1981, when he started doing odd jobs around her house. The signature on the statement is illegible; however, the writer lists her address in Stamford, Connecticut. We note that the applicant stated that he did not move to Stamford until 1983.
5. A May 21, 1993, statement from [REDACTED] in which he stated that he met the applicant in 1981 when he was working in a pizza restaurant.
6. An undated letter from [REDACTED] in which she stated that she had known the applicant since 1983, and that he was "not only a good driver, but totally reliable and responsible."

The applicant also submitted a copy of an undated statement from [REDACTED], in which she stated that she knew the applicant from riding in his taxi. As discussed above, the applicant stated that he became a taxi driver in 1990. Therefore, [REDACTED] statement is not probative in establishing the applicant's residency and presence in the United States during the qualifying period. Additionally, on his Form G-325A submitted in conjunction with his Form I-485 application as a spouse of a lawful permanent resident, the applicant stated that he had lived in Bangladesh until September 1990.

With his Form I-687 application the applicant submitted receipts indicating that they were for money received from [REDACTED] for rent at [REDACTED]. The receipts are dated in 1980 and 1981. The applicant also submitted two envelopes. One was addressed to the applicant at [REDACTED], New Milford, Connecticut, and bore a postmark of May 23, 1982. The other was addressed to the applicant at [REDACTED] in Stamford, Connecticut, and carried a postmark of January 2, 1989.

In a June 13, 1994, notice of intent to revoke class membership, the District Director, Hartford, Connecticut, notified the applicant and his then attorney that two envelopes submitted by the applicant in support of his Form I-687 application had been examined by the legacy INS Forensics Laboratory and were determined to be fraudulently produced. The applicant was advised that he had 15 days in which to provide evidence that as to why his class membership should not be rescinded. The applicant did not respond to the notice, and on July 29, 1994, the director rescinded the applicant's class membership.

The applicant did not submit copies of the envelopes and rent receipts with his Form I-485 application. However, they remain part of the record.

On May 18, 2005, the director issued a Notice of Intent to Deny (NOID) in which she again notified the applicant that the forensics laboratory had determined that the envelopes and rent receipts he submitted with his Form I-687 application had been determined to be fraudulent. The director also informed the

applicant that after attempting to verify with [REDACTED] the information that he provided in his affidavits, the district office was not persuaded as to his credibility. The director noted inconsistencies in [REDACTED]'s statements and also in those of statements submitted by others. The applicant was advised that he had 30 days in which to submit evidence in rebuttal of the director's findings. The applicant did not respond to the NOID.

On appeal, counsel states that the applicant submitted his "entire original documents to the service" and testifies "under oath that the documents submitted were bonafide and credible." The applicant submits copies of January 6, 2005, affidavits from [REDACTED] and [REDACTED] in which they state that they have known the applicant since May or June 1982. The applicant also submits a copy of a May 5, 2004, certificate attesting to his interest and effort in "Americanization and Citizenship" issued by the Stamford Public Schools Adult and Continuing Education.

The applicant has provided contradictory information regarding his entry and residency in the United States. He initially alleged that he arrived in the United States in October 1980; however, when he applied for adjustment to status based on his marriage to a lawful permanent resident, he stated on his Form G-325A that he lived in Bangladesh until 1990. Additionally, both he and [REDACTED] stated that the applicant lived with [REDACTED] at [REDACTED] in New Milford from October 2, 1980, to January 31, 1983. However, a letter written by [REDACTED] indicates that he vacated the apartment after his lease expired in 1981.

Furthermore, the applicant submitted documentation that was determined by the forensics laboratory to be fraudulent. According to counsel, the applicant testifies that these documents are real and credible. However, the record is silent as to the applicant's explanation or attestation to the veracity of these documents. The applicant did not respond to the notice of intent to rescind his class membership in 1994 or to the director's NOID in 2005. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 applicant has failed to submit any objective evidence to explain or justify the contradictions in his evidence or the finding of fraud. Therefore, the reliability of the remaining evidence offered by the applicant is suspect, and it must be concluded that the applicant has failed to establish by a preponderance of the evidence that he is eligible for adjustment of status under the LIFE Act.

Further, by filing Form I-687 application and submitting fraudulent envelopes, the applicant has sought to procure a benefit provided under the Act using fraudulent documents. The applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, the finding that the envelopes were falsifications. An applicant for permanent resident status under the provisions of the LIFE Act must establish that he or she is admissible as an immigrant. Section 1104(c)(2)(D)(i) of the LIFE Act. Because of his attempt to procure a benefit under the Act through fraud, we find that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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 with a finding of fraud. This decision constitutes a final notice of ineligibility.