



U.S. Citizenship
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FILE: [REDACTED]
MSC 02 033 62151

Office: TAMPA

Date: NOV 20 2008

IN RE: Applicant: [REDACTED]



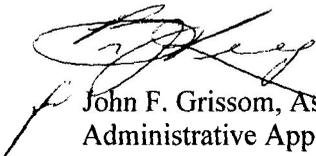
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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.


John F. Grissom, Assistant Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel argues that the director held the applicant to a higher standard than the one Congress intended to afford LIFE Act applicants. Counsel states that the applicant could not provide additional documentation because her documents were stolen in 1989. Counsel submits copies of documents that were previously provided.

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. Section 1104(c)(2)(B)(i) 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 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant only provided an affidavit from [REDACTED] who indicated that the applicant was a previous tenant residing at [REDACTED], Fort Pierce from 1981 to 1982.

At the time of her LIFE interview, the applicant indicated that in October 1981, at the age of 12, she traveled from Bangladesh with a passport via Germany to the Bahamas and entered the United States without inspection. The applicant indicated she traveled to Bangladesh on June 19, 1982 with a new passport and reentered the United States the same month with a visitor's visa. The applicant indicated that she had lost her passports and Form I-94.

On August 18, 2003, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavit from [REDACTED] was not corroborated by any documentary evidence, and the applicant had failed to provide other documents to establish her arrival and continuous residence in the United States since 1982.

Counsel, in response, cited a legacy Immigration and Naturalization Service (INS) memorandum issued on February 13, 1989, which provided guidance on the evidentiary weight of affidavits in legalization applications under section 245A of the Immigration and Nationality Act. Counsel submitted an affidavit from the applicant, who indicated that she was married in Bangladesh in the customary Muslim tradition in 1981 and has resided in the United States since October 1981. The applicant indicated that she was forced to leave her country as a result of credible kidnap threats against her life. The applicant listed her residences through the requisite period with her husband, [REDACTED], and other individuals as follows: 1) 1981 to 1982 at [REDACTED], Fort Pierce, Florida; 2) 1982 at [REDACTED] in Fort Pierce; 3) 1983 to 1987 at [REDACTED], Fort Pierce; and 4) from 1987 at [REDACTED], Fort Lauderdale, Florida. The applicant indicated that her departure to Bangladesh in 1982 did not interrupt her continuous residence as it was for less than three weeks. The applicant indicated that her spouse attempted to request a police report regarding the 1989 theft of their documents, but was informed in 1991 by the Sheriff's Department that the report was unavailable as the department did not keep records that far back. Counsel also submitted the following:

- An affidavit from [REDACTED] of Largo, Florida, who indicated that he has known the applicant since January 1982. The affiant asserted while he was a student at Indian River Community College from 1983 to 1986, he resided with the applicant and her spouse as a paying guest. The affiant asserted that in 1982 when the applicant departed the United States, he drove the applicant to and from the Miami Airport. The affiant indicated that he resided with the applicant in Fort Lauderdale from 1987 to 1991 and assisted the applicant in filling out the Form I-687 application.
- An affidavit from [REDACTED] of Orlando, Florida, who indicated that he has known the applicant since 1986 and had stayed with the applicant and her husband in Fort Pierce, Florida for a couple of days in 1986. The affiant indicated that he occasionally visited the applicant at [REDACTED], Fort Lauderdale after her move in 1987. The affiant asserted that the applicant has visited him at his residence in Orlando, Florida.
- A letter dated June 15, 2001, written by the applicant's spouse and addressed to Broward Sheriff's Department requesting a copy of a report made on November 20, 1989. At the end of the letter is a handwritten notation indicating, "Our Records does not go back to 89."
- An affidavit from the applicant's father, who resides in Bangladesh, indicating that as a result of the many threats on his daughter's life, he and the family of his intended son-in-law decided to

send the applicant to the United States. The affiant attested to the marriage of his daughter in 1981, her departure during the same year to the United States and her return in 1982.

Counsel also provided other documents that have no relevance as they serve to establish the applicant's residence and physical presence in the United States subsequent to the requisite period or were attesting only to the residence of the applicant's spouse in the United States.

The director, in denying the application, considered the documents submitted and determined that: 1) [REDACTED] indicated that he resided with the applicant from 1983 to 1986 and he assisted the applicant in filling out the Form I-687 application. However, the Form I-687 application did not reflect that anyone other than the applicant completed the application and the applicant, in her affidavit, indicated that the affiant resided with her from 1981 to 1999; 2) the author of the handwritten notation was not identified on the applicant's letter of June 15, 2001 to the Sheriff's Department; 3) the applicant presented no evidence of school, immunization or medical records although she claimed to have entered the United States at the age of 12. The director determined that little probative weight could be given to the affidavits provided as they were not corroborated by any other evidence.

Regarding the applicant's legal entry into the United States in June 1982, the director noted, in pertinent part, that the applicant "made no attempt throughout the years even with aid of legal counsel to request duplicates of your entry documents. Nor did you attempt to secure records showing date and place of issuance of the passports you claimed lost. This casts grave doubt on the information in file and places continuous residence and continuous physical presence in question."

The director, in his decision, cited several case laws that have no relevance in this proceeding. The director's error is harmless because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, counsel asserts that the applicant has presented sufficient evidence to establish her eligibility by a preponderance of the evidence as she entered the United States in October 1981 and has resided since that date through May 4, 1988.

Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. See *Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant and counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988.

The applicant, in her affidavit, indicated that she was married in Bangladesh in 1981. The applicant does not submit a copy of a marriage certificate and, therefore, it has not been proven that a marriage occurred in

1981. Furthermore, the applicant provided a copy of her Florida marriage certificate and on her Form G-325A, Biographic Information, the applicant indicated that her marriage occurred on May 16, 1991 in Fort Lauderdale, Florida.

The affidavit from [REDACTED] has no probative value as the affiant failed to provide a telephone number or address and, therefore, is not amenable to verification by the CIS.

Counsel asserts that the applicant has been residing in the United States since October 1981. Except for the applicant's own testimony, no *credible* evidence has been presented to support this assertion. [REDACTED] in his affidavit, indicated that he met the applicant in "January 1982" and that he resided with the applicant from "1983 to 1986." The affidavit from the applicant's father may only serve to establish the applicant's departure from the Bangladesh in 1981. As the father has never resided in the United States, he cannot attest to the applicant's residence during the requisite period. [REDACTED] in his affidavit, indicated that he has known the applicant since "1986."

The Form I-687 application requests that the applicant list all her residences in the United States since her first entry. The applicant claimed only one residence commencing in 1989. This lessens the credibility of the affidavits submitted in an attempt to establish the applicant's continuous residence since before January 1, 1982 through May 4, 1988. The applicant, in affixing her signature on item 46 of the Form I-687, certified that the information she provided was *true* and *correct*.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that she entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, 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.