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U.S. Citizenship
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Services

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FILE:


MSC 01 317 60479

Office: NEW YORK

Date:

OCT 22 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. 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: On April 27, 2007, the District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988. In an April 5, 2006, Notice of Intent to Deny (NOID), the director noted that the applicant submitted several affidavits and that an airline ticket the applicant submitted as evidence of travel in 1987 appeared to be fraudulent.

Counsel for the applicant asserts that the NOID made no finding fraud and that the denial did not conduct an independent evaluation of the validity of the plane ticket and should be nullified.

An applicant for permanent resident status under section 1104 of the LIFE Act 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). **The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 states 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). See 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)."

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden, establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The record reflects that on August 13, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On February 23, 2004, the applicant appeared for an interview based on the application.

The applicant has provided the following evidence relating to the requisite period:

- A receipt dated April 4, 1984, from [REDACTED], in Astoria, New York, and a receipt dated April 3, 1982 from Rhythm House, Inc. in New York City. While both receipts contain the applicant's name, neither includes his address. And, while a receipt for purchases may indicate presence in the United States on the date issued, it has minimal weight as evidence of the applicant's continuous residence in the United States during the statutory period;

- Photocopies of several envelopes addressed to the applicant in the United States. Many of the envelopes appear to be date-stamped in 1990, after the statutory period and many of the envelopes have illegible date stamps on them. These can be given no evidentiary weight of the applicant's continuous residence in the United States during the requisite period. Some of the envelopes are date-stamped in 1982, 1984, and 1985. Although the address on these envelopes are consistent with the address listed on the applicant's Form I-687, these three envelopes, two of which are dated more than two years apart, can be given minimal evidentiary weight, as they are insufficient to establish the applicant's continuous residence and physical presence from prior to January 1, 1982, through May 1, 1988.
- A handwritten letter dated June 22, 1983, from [REDACTED] Dr. [REDACTED] asserts that the applicant was under his treatment from June 12, 1983, to June 22, 1983. He states that the applicant was having some pain in his right arm and was advised to rest for 15 days. This letter can be given minimal weight as evidence of the applicant's continuous residence during the statutory period because it lacks any indication of what records were consulted and where the applicant was living at the time. In addition, Dr. [REDACTED] fails to provide basic details, including his diagnosis. Furthermore, the letter is not notarized. Lacking such relevant details and authentication, this letter can only be given minimal weight as evidence of the applicant's continuous residence during the requisite period;
- A letter dated April 16, 1991, from [REDACTED] president of the Memon Association of America, Inc. Mr. [REDACTED] provides the applicant's address at the time of the letter and states that the applicant has been known to them since 1980. The letter states that the applicant is a member of the community and attends all the events and functions of the community. He states that the applicant is very kind and hard-working. This letter can be given little evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letter does not explain the origin of the information given, nor does it provide the address where the applicant resided during the period of his involvement with the association. Furthermore, the letter does not indicate the frequency with which he attended functions or the nature of the functions and events;
- A letter dated April 23, 1991, from [REDACTED] the applicant's cousin. He states that he has known the applicant since childhood. Although he states that to the best of his recollection, the applicant came to the United States "sometime in 1981," Mr. [REDACTED] does explain how he recalls that it was 1981 when the applicant first arrived. He states that the applicant was staying in Brooklyn at the

time and that he met him in New York City during one of his frequent visits. He states that he has since had the opportunity to meet the applicant at pre-determined places in Manhattan. Mr. [REDACTED] does not provide any specific details of the circumstances of the applicant's residence in the United States during the statutory period. He does not provide the addresses where the applicant lived and appears to have no personal knowledge of the applicant's entry into the United States. As such, this letters has minimal weight as evidence of the applicant's continuous residence in the United States during the requisite period;

- A letter dated April 17, 1991, signed by [REDACTED], president of the Masjid Alfalah. Mr. [REDACTED] certifies that the applicant "has been visiting the Masjid (Mosque) frequently for the purpose of Friday Congregational Prayers." He states that the applicant possesses good moral character. As with the letter from the Memon Association listed above, this letter can be given little evidentiary weight and has little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letter does not explain the origin of the information given, nor does it provide the address where the applicant resided during the period of his involvement with the mosque. Furthermore, the letter does not state when the applicant first began attending the mosque or the frequency with which he attended;
- Three statements from [REDACTED] a. In an affidavit notarized on February 6th, 1990, Mr. [REDACTED] asserts that he is a U.S. citizen and has been living in the United States since 1971. He states that the applicant is a friend of his from Pakistan and that the applicant came to live with him when he first arrived in the United States in January 1981. He states that the applicant lived with him until January 1988. Mr. [REDACTED] also states that the applicant worked for him as a cook and household helper from January 1981 to September 1983. He provides the applicant's address on the date of the affidavit and asserts that he visits and phones the applicant and spends the weekends with the applicant. He asserts that he knows of the applicant's employment at Myrtle Grocery in Glendale, New York, and Rorie Variety in Brooklyn, New York. Although Mr. [REDACTED] a asserts that the applicant has continuously lived in the United States since January 1981, he fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than the locations of where he resided and worked. He claims to have kept in contact with the applicant since he arrived but does not indicate the frequency of his visits with the applicant. Given this lack of detail, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period.

In an undated, unnotarized letter, Mr. [REDACTED] states that the applicant worked as a store helper for him at Rorie Variety from September 1983 to October 1986 and was paid \$125 per week. In a second undated, unnotarized letter Mr. [REDACTED] states that the applicant worked for him as a store clerk from November 1986 to January 1988 and was paid \$150 per week. These letters can be given little evidentiary weight because they lack sufficient detail and information required by the regulations. Specifically, Mr. [REDACTED] fails to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, he also fails to declare which records the information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable. In addition, the letters listed his positions but did not list the applicant's duties with the stores. Therefore, these letters can be accorded only minimal weight as evidence of residence during the statutory period.

In an "Affidavit of Witness" form, sworn to on December 24, 1990, Mr. [REDACTED] indicates that the affiant has personal knowledge that the applicant has resided in the United States in New York from January 1981 to the date of the affidavit. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____." Mr. [REDACTED] added: "That I have known [the applicant] from 1981 and I know he has resided with me from 1-81 to 1-88. I know he has resided continuously in the USA since 1981 until the present except for his brief absence in 1987. This affidavit, prepared on a fill-in-the-blank form, contains minimal details regarding any relationship with the applicant during the requisite period. Mr. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than the location where he resided. As a result, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the statutory period;

An affidavit dated July 3, 2001, from [REDACTED], a U.S. citizen and owner of the Islamic Book Store & Halal Meat. He asserts that the applicant comes to his Halal meat store 2 to 3 times per week to buy Halal and other things. Although Mr. [REDACTED] asserts that he has known the applicant since January 1981, he does not indicate any personal knowledge of the applicant's claimed entry; he does not list the applicant's addresses, and does not provide information demonstrating any personal knowledge of the applicant's residence in the United States during the requisite period. Because this letter is significantly lacking in relevant detail, it lacks probative value and has only minimal weight as evidence of the applicant's residence in the United States during the requisite period; and,

- A letter dated July 5, 2001, from [REDACTED], a U.S. citizen and friend of the applicant. Mr. [REDACTED] provides his current address and while he asserts that he has “personal knowledge that [the applicant] arrived in the U.S. without inspection in January of 1981,” he does not indicate any personal knowledge of the applicant’s claimed entry into the United States. He states that from January 1981 to the date of the letter, he has seen the applicant four to five times a year at various holiday and religious functions. He does not indicate the date, the place, or the circumstances under which he first met the applicant. Furthermore, Mr. [REDACTED] does not provide any personal knowledge of addresses where the applicant has lived during the statutory period or any other details that would indicate knowledge of the circumstances of the applicant’s residence in the United States during the required period. Given this lack of detail, the letter can be given minimal weight as evidence of the applicant’s continuous residence or physical presence in the United States during the requisite period;

For the reasons noted above, these documents can be given little evidentiary weight and are of little probative value as evidence of the applicant’s residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant’s presence in the United States during the requisite period.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which he claims to have first entered the United States without inspection in January 1981, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

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 primarily on letters and affidavits alone, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.