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U.S. Citizenship
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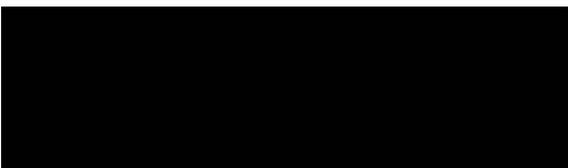


FILE: [REDACTED] Office: NEW YORK Date: OCT 28 2008
MSC 02 028 62076

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.

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 Director, New York, New York, 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 he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the director's Notice of Intent to Deny is incorrect as the applicant was never interviewed on October 20, 2003. Counsel argues that it is unfair to use information against the applicant to which he did not testify to or provide. Counsel asserts that his Freedom of Information Act (FOIA) request is still pending. Counsel argues that the applicant's right to due process has been violated as he has not been provided the opportunity to review contents of the record and the denial notice should not have been issued.

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 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.

The first issue that will be addressed is whether the applicant appeared for an interview on October 20, 2003.

The director, in issuing the Notice of Intent to Deny dated November 3, 2006, indicated that during the course of the applicant's interview on October 20, 2003, several discrepancies were revealed between his oral testimony and the documentation contained in his record.

On appeal, counsel asserts that the applicant submitted a response to the director's notice. A thorough review of the record, however, does not reflect that a response was received prior to the issuance of the director's Notice of Decision dated April 20, 2007.

Counsel asserts, "[i]nstead on 10/20/03, the respondent requested to schedule an interview appointment for his adjustment of status and he was never interviewed. This request to re-schedule was based on a genuine cause." Counsel provides a copy of an affidavit from the applicant that was purportedly submitted in response to the Notice of Intent to Deny. In the affidavit, the applicant asserted, "[i]t seems that the notice of intent to deny was sent on error because I was never been interviewed by immigration office on October 20, 2003 and additional submission requested are not applicable to me."

Counsel also submitted a photocopied Form G-56 dated October 1, 2003, which advised the applicant of his scheduled interview on October 20, 2003. The form advised that if the applicant was not able to keep his appointment, he should state the reason along with his signature in the designated box on the form. The designated box neither contains a signature nor a reason for not keeping the scheduled interview on October 20, 2003. In addition, on the interview worksheet dated October 20, 2003, and signed by the interviewing officer, there is no indication that the applicant did not show up for this interview. Accordingly, counsel has not provided credible evidence to dispute the director's finding.

The second issue that will be addressed is counsel's FOIA request.

The regulation at 8 C.F.R. 245a.20(b)(1) states if a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative and an appeal has been properly filed, an additional 30 days will be allowed for this review from the time the ROP is photocopied and mailed. [Emphasis added].

The record reflects that counsel's FOIA request was submitted prior to the issuance of the director's Notice of Intent to Deny. Counsel cites no regulation or statute that prevents the adjudicating procedure to be carried out by the director while a FOIA request is pending. Counsel's FOIA request was complied with on June 15, 2007 and mailed to his address of record. **More than a year later, no additional correspondence has been presented by either counsel or the applicant.**

The third issue that will be addressed is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

The record reflects that on March 23, 1990, a Form I-221S, Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, was issued.¹ The applicant entered the United States in Buffalo, New York on October 28, 1988. On April 26, 1990, a deportation hearing was held and the applicant was ordered deported *in absentia*. On December 19, 1990, a Form I-205, Warrant of Deportation, was issued.

The record also reflects that on September 30, 1997, a Form I-130, Petition for Alien Relative, was filed on his behalf by his spouse. On the same date, a Form I-485 application was filed by the applicant. Accompanying the Form I-485 application, is a Form G-325A, Biographic Information, signed by the applicant on September 23, 1997.² The applicant indicated on the Form G-325A that he resided in his native country, India, from March 1960 to September 1987. The applicant listed his address at [REDACTED] Richmond Hill, New York from January 1988 to January 1993. The applicant claimed to be self-employed in construction from February 1988 to March 1993.

Along with his LIFE application, the applicant, in an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, provided the following evidence:

- A notarized affidavit from [REDACTED] of Jamaica, New York, who indicated that he has known the applicant since January 1986. The affiant attested to the applicant's residences at [REDACTED] North Hollywood, California and at [REDACTED], Van Nuys, California from June 1986 to March 1990. The affiant indicated that he met the applicant each Sunday at the Sikh Temple.
- A notarized affidavit from [REDACTED] of Richmond Hill, New York, who indicated that he met the applicant in 1982 at a temple. The affiant attested to the applicant's Richmond Hill address at [REDACTED] from January 1982 to February 1984. The affiant asserted that he did not see the applicant from "1986 to 1990 at the time he [the applicant] was moved to California."
- A notarized affidavit from [REDACTED] who indicated that he and the applicant shared residence at [REDACTED], Van Nuys, California from September 1, 1987 to September 30, 1990.
- A notarized affidavit from [REDACTED] of North Hollywood, California, who indicated that he and the applicant shared residence at [REDACTED], North Hollywood, California from March 1, 1984 to August 5, 1987.
- A notarized affidavit from [REDACTED] of Richmond Hill, New York, who indicated that he and the applicant shared residence at [REDACTED], Richmond Hill, New York from "10-3-81 to 2-30-84."
- A notarized affidavit from an individual named [REDACTED]" who indicated that the applicant was employed by [REDACTED]" as a mechanic from March 10, 1984 to August 1, 1987 at Econo Lube-n-Tube at [REDACTED], Hollywood, CA 91605.
- Two envelopes with indecipherable postmarks.
- An undated letter from [REDACTED] of Royal Waterproofing Co., in Brooklyn, New York.

On November 3, 2006, the director issued a Notice of Intent to Deny, which informed the applicant of the Warrant of Deportation and of his statement indicating that he entered the United States "by jumping ship somewhere in Canada and was caught on October 28, 1988 in Buffalo, New York." The director advised the

¹ The applicant was assigned alien registration number [REDACTED]

² In a statement dated July 3, 2002, the applicant withdrew this Form I-485 application.

applicant that he did not disclose this departure on his Form I-687 application. The director also advised the applicant of the following discrepancies:

1. The applicant's birth certificate was issued in India on August 5, 1987; however, the applicant did not disclose a departure to India during the requisite period on his Form I-687 application.
2. The employment letter from Royal Waterproof Co. was not dated and failed to list the applicant's name. According to a conversation on October 20, 2003, with the New York telephone operator and directory, the letterhead and address do not relate to [REDACTED] and the applicant was not known at the address or location.
3. The Form G-325A listed the applicant's last address in Punjab, India from March 1960 to September 1987.
4. The applicant, at item 10 on his LIFE application, indicated that he has not been under a final order of civil penalty for use of fraudulent documents or by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured a visa, other documentation, entry into the United States, or any other immigration benefit.
5. The applicant failed to mention on his LIFE application that he was "given expedited deportation on March 26, 1990."³
6. The affidavits submitted in support of his LIFE application were uncorroborated and were not sufficient to overcome the discrepancies and the applicant's fictitious statements.

The director advised the applicant that he had "tried to acquire an employment authorization by Aiding and Abetting a Public Official." This information was derived from an investigation conducted in the early 1990's where [REDACTED], on September 15, 1992, signed a plea agreement in which he plead guilty to conspiring to bribe a public official, filing false applications for adjustment of alien status and aiding and abetting. In the plea agreement, the defendant identified 30 applications including the applicant's that the defendant agreed with and did aid and abet with another individual to bribe a public official and to file false applications for adjustment of alien status.

The director further advised the applicant that he had indicated at item 9 on his LIFE application that he had never been deported or removed from the United States. However, a review of the LIFE application reflects that the applicant left the box blank. This finding is therefore withdrawn.

The director, in issuing her Notice of Intent to Deny, also drew extensively from the questions and answers provided at the time of the applicant's LIFE interview. However, neither the interviewing officer's notes nor a signed statement executed by the applicant corroborating the interviewing officer's questions, which would further impact adversely on the applicant's credibility, were incorporated into the record. Consequently, the director's findings that the applicant's oral testimony was inconsistent with other information in the record are withdrawn.

The applicant was given 30 days in which to submit additional evidence. The director, in denying the application, noted that the applicant failed to submit additional documentation to rebut the Notice of Intent to Deny.

The AAO does not view the documents submitted with the LIFE application substantive enough to support a finding that the applicant continuously resided in the United States since before January 1,

³ The deportation date should read April 26, 1990.

1982, through May 4, 1988, as he has presented contradictory documents, which undermines his credibility.

The applicant was provided the opportunity to address the discrepancies outlined in the Notice of Intent to Deny, but failed to do so. The fact that the applicant claimed on his Form G-235A dated September 23, 1997 to have resided in India until September 1987 and to have resided at [REDACTED], Richmond Hill, New York since March 1988, diminishes the credibility of his claim to have resided in the United States prior to January 1, 1982 and to the affidavits submitted by the affiants attesting to his residence in the United States before September 1987. Furthermore:

- The affidavit from [REDACTED] raises further questions to its authenticity as the affiant indicated “I also see and meet him [the applicant] every Sunday at Sikh Temple...” However, the applicant indicated on his Form I-687 application that he was *not* affiliated with any religious organization during the requisite period.
- The affidavit from [REDACTED] raises further questions to its authenticity as the affiant listed his residence in New York, but the affidavit was subscribed and sworn to before a notary licensed in the state of California.
- The employment affidavit from [REDACTED] failed to provide the applicant’s address at the time of employment, show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i).

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).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he 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.