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U.S. Citizenship
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Services

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FILE:

MSC 02 066 61970

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 May 12, 2006, the District Director, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding that the applicant was not credible because of discrepancies between his oral and written testimony. In an April 23, 2006, Notice of Intent to Deny (NOID) the director found the applicant not credible. The interviewing officer noted discrepancies between the applicant's testimony at the interview and several documents in the record. The interviewing officer stated that the applicant testified at his interview that he entered the United States on December 31, 1981, but that the employment letter he submitted stated that he began working at a bowling alley in Brooklyn in March 1981 and the letter from his landlady stated that he began living in an apartment in Jackson Heights in January 1981. In response, the applicant submitted a notarized statement in which he asserted that he did not testify that he entered the United States in December 1981. The applicant asserted that he testified at his interview that he entered the United States in December 1980. He asserted that the affidavits and other documentation established his eligibility. Nevertheless, the director denied the application, concluding that the applicant was not credible.

On appeal, counsel for the applicant asserts that the applicant arrived in the United States in January 1981, as stated in a sworn statement from the applicant. Counsel asserts that the applicant submitted sufficient evidence to establish that he lived in the United States throughout 1981 and beyond. He asserts that the applicant adequately explains the discrepancies referred to by the director and that the denial should not be based solely on one minor error made in the course of the interview. He states that if the applicant said "December 1981" instead of "1980," this "must be considered de minimis and should not undermine all other evidence proving his residence since his arrival."

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),” dated March 31, 1990.

The record reflects that on December 5, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On February 11, 2004, the applicant appeared for an interview based on his application.

Regarding the discrepancies referred to by the director, 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 petitioner submits competent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92

(BIA 1988). The record reflects that the applicant stated on his Form I-687 that he entered the United States in January 1981 and that he reentered the United States on September 25, 1987. The director states that during the interview, the applicant corrected the date, and stated that he entered in December 1981. The applicant explains that he meant to correct the date and state that he entered in December 1980. He states in his notarized affidavit that he entered the United States in December 1980. This explanation is sufficient. It is reasonable and logically consistent that the applicant meant to correct his date of entry at his interview and mistakenly said 1981 when he meant 1980.

The applicant cannot be approved, however, because the applicant has not 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 provide sufficient evidence that he entered and resided in the United States during the statutory period.

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

- 16 rent receipts and two letters from the [REDACTED], the applicant's former landlady. The receipts signed by [REDACTED] for money received from the applicant from January 1981 through November 1986, are non-sequential and can therefore be afforded minimal weight as evidence of the applicant's continuous residence. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). As such, the letters submitted by [REDACTED] can also be afforded minimal evidentiary weight.

In a letter dated February 28, 1990, [REDACTED] simply attests that the applicant lived in her apartment from January 1981 to December 1988. In an updated letter dated June 29, 2006, [REDACTED] attests that at the beginning of January 1981, the applicant moved into one of the properties she owns in Brooklyn, New York, and that he moved in with another tenant named [REDACTED]. She states that in March 1981, she needed to perform renovations at that property so the applicant and [REDACTED] moved to another property she owned on the same street. She states that by July 1982, that apartment also needed renovation, so the applicant and [REDACTED] moved to the apartment next door until March 1983. She states that they remained there until December 1988. She states that [REDACTED] purchased his own property and the applicant moved in with him. Again, because doubt has been cast on the authenticity of the non-sequential rent receipts the applicant submitted, minimal weight can be given to this letter as evidence of the applicant's continuous residence in the United States during the statutory period;

- Two letters from the applicant's former employer, [REDACTED]. In a letter dated March 28, 1990, [REDACTED], head mechanic at [REDACTED] in Woodside, New York, attests that the applicant worked for him at Northern Lanes Bowling Center in Jackson Heights from March 1981, until June 30, 1988, when the place closed down. [REDACTED] attests that the applicant was his partner and was an honest guy;

In an updated letter dated June 29, 2006, [REDACTED] states that the applicant worked for him at several bowling alleys for a period of ten years from March 1981 to April 1990, with a gap from December 1989 to May 1990, while he was living in California. He states that these bowling alleys included Northern Lanes until 1988, and then 34th Avenue Bowl where the applicant continued to work with him.

By regulation, letters from employers should be on employer letterhead stationery if available and must include the applicant's address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer's willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). Neither letter from [REDACTED] meets these regulatory standards. Specifically, the letters do not provide the applicant's addresses at the time of employment and [REDACTED] did not offer to either produce official company records or to testify regarding the unavailability of such records. Therefore, these letters can be accorded only minimal weight as evidence of residence during the requisite period;

- A letter dated March 30, 1998, from [REDACTED], the applicant's friend. [REDACTED] states that he has known the applicant for the last 18 years. Mr. [REDACTED] provides the address where the applicant was living at the time the letter was written and states that the applicant is a very hard-working person. Mr. [REDACTED] does not provide any details about his relationship with the applicant over a period of almost 20 years. He does not describe how they met or how often they spoke or saw each other during the 18 years of their claimed relationship. He has not submitted any documentation to establish that he resided in the United States during the requisite period. Furthermore, he provides no details or knowledge of the applicant's entry to the United States prior to January 1, 1982, or his continuous residence and physical presence during the requisite 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;

- A fill-in-the blank affidavit notarized on April 6, 1990, from [REDACTED], the applicant's friend. [REDACTED] indicates that he is a U.S. citizen and provides the applicant's current address. Although the form indicates that the affiant knows that the applicant has resided continuously in the United States since January 1981 to present, there is no indication that the affiant has any personal knowledge of the applicant's entry into the United States in January 1981. Furthermore, Mr. [REDACTED] provides information about when, where, or under what circumstances he first met the applicant. The affiant's statement that he knows that the applicant departed the United States on September 3, 1987, went to Canada, and returned to the United States on September 25, 1987, while possibly confirming the applicant's absence in 1987, has limited relevance as evidence of his continuous residence in the United States during the requisite period. This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period. Mr. [REDACTED] fails to indicate any personal knowledge of the circumstances of his residence. 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 March 17, 1990, from [REDACTED] secretary of the Islamic Council of America, Inc., in New York, New York. Mr. [REDACTED] states that the applicant was personally known to him since 1981 at the mosque, where they prayed on a daily basis. This letter can be given minimal 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 attested to nor does it provide the address where the applicant resided during the period of his involvement with the mosque.

The AAO notes that the attorneys who previously represented the applicant and who filed the applicant's Form I-687, [REDACTED], were convicted of preparing fraudulent documents in support of legalization applications and for submitting fraudulent applications for class membership under the CSS and LULAC lawsuits.

The applicant submitted several other documents which make reference to him residing in New York and California after the requisite period, including a letter dated March 28, 1990, from [REDACTED], the applicant's former roommate, stating that the applicant lived with him from January 1989 to December 1989. These documents all indicate physical presence after May 4, 1988, and do not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

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 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 on affidavits, 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.