



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[REDACTED]

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FILE: [REDACTED]
MSC 02 009 60036

Office: NEW YORK

Date: **SEP 10 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:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On October 23, 2006, the District Director, New York, 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 because the applicant failed to submit credible documents which would constitute a preponderance of the evidence as to his residence in the United States during required the statutory period. The director found that the applicant's testimony regarding his initial entry into the United States was inconsistent and lacked credibility. The director noted that, during his LIFE Act interview, the applicant testified that he first entered the United States on November 12, 1980, with a valid B-2 visitor's visa through JFK airport in New York. The applicant further testified that he subsequently left the United States and reentered on September 20, 1982, with a valid B-2 visitor's visa at New York, New York. The director noted that the applicant had previously testified, during an interview to determine eligibility for the Immigrant Reform and Control Act of 1986 (IRCA) Legalization Program, that he did not have a valid U.S. visa to enter the United States on November 12, 1980, or on September 20, 1982. In support of his Legalization application, the applicant submitted a Form I-94, Arrival/Departure Record, that showed an entrance into the United States on September 20, 1982, as a B-2 visitor for pleasure at New York, New York. (See Form I-94 in the record of proceeding). He told the interviewing officer that he purchased the Form I-94 from someone in Florida. The applicant then withdrew his Legalization application, claiming a mistake in the file. The director noted that none of the other documents submitted by the applicant were credible or verifiable. The director also concluded that counsel's response to the NOID was the submission of fabricated evidence and found the applicant inadmissible under I.N.A. section 212(a)(6)(C) for willful misrepresentation of a material fact because he submitted fraudulent evidence.

On appeal, counsel for the applicant asserts that the applicant has established his eligibility for adjustment under the LIFE Act. He asserts that the applicant is unable to communicate properly in English and that his ability to express months and dates correctly is inadequate. Counsel asserts that the applicant never submitted a fraudulent Form I-94, that he only provided an I-94 number and passport number because he lost his passport in 1990.¹ Counsel addresses the director's other grounds for denial and asserts that the documents submitted tend to prove the applicant's residence in the United States during the statutory period.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the

¹ There appears to be some confusion regarding the applicant's claimed entries into the United States. The district director asserts that the applicant admitted to filing a fraudulent Form I-94 for his entrance in 1982. Counsel appears to be referring to the applicant's claimed entry in 1980, not to the entry in 1982.

United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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 record reflects that on September 4, 1991, the applicant submitted a Form I-687, Application for Status as Temporary Resident under IRCA. In connection with his Legalization application, the applicant testified that he did not have a valid visa to enter the United States on November 12, 1980, or on September 20, 1982. He submitted a Form I-94 that he admitted

purchasing from someone in Florida. On January 25, 2001, the applicant withdrew his Legalization application.

On October 9, 2001, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On May 3, 2004, the applicant appeared for an interview based on his application.

On March 15, 2005, he director issued the applicant a Notice of Intent to Deny (NOID) the application, finding that the applicant failed to establish, by a preponderance of the evidence, his continuous residence in the United States during the statutory period. The director found that the applicant's testimony regarding his initial entry into the United States was inconsistent and lacked credibility. The director noted that, during his LIFE Act interview, the applicant testified that he first entered the United States on November 12, 1980, with a valid B-2 visitor's visa through JFK airport in New York. The applicant further testified that he subsequently left the United States and reentered on September 20, 1982, with a valid B-2 visitor's visa at New York, New York. The applicant stated that he lost his passport in 1990, but gave the interviewing officer the passport number and the number of the Form I-94 contained in the passport. The director noted that the applicant had previously testified, during an interview to determine eligibility for Legalization, that he did not have a valid U.S. visa to enter the United States on November 12, 1980, or on September 20, 1982. In support of his Legalization applicant, the applicant submitted an allegedly original Form I-94 that showed an entrance into the United States on September 20, 1982, as a B-2 visitor for pleasure at New York, New York. (*See* Form I-94 in the record of proceeding). He told the interviewing officer that he purchased the Form I-94 from someone in Florida. The applicant then withdrew his Legalization application, claiming a mistake in the file.

The director noted that the affidavits submitted by the applicant did not show any specific personal knowledge of his whereabouts during the relevant time. The director noted that of all of the affidavits submitted, six of them did not include identification, contact phone numbers, or any proof that the affiants were present in the United States during the statutory period. The director stated that the number provided in the letter from Mimosa Restaurant was not in service and that the information contained in that letter was unverifiable. The director indicated that Citizenship and Immigration Services (CIS) contacted the Jamaica Muslim Center and that they had no recollection of the applicant and did not recognize the applicant's name. The Center spent five days looking through their records but were unable to find anything that would support the applicant's claim. The director informed the applicant that he had 30 days from the receipt of the NOID to submit evidence to overcome the director's intent to deny his application.

In response, counsel for the applicant submitted a statement asserting that the director claimed that the applicant had no evidence of his entry on November 12, 1980, but that the applicant did provide proof of that entry in the form of the passport number, I-94 number, and visa information. Counsel suggested that CIS check their records to verify the information. Counsel asserted that the applicant submitted several primary documents in support of his claim and that the director made no adverse credibility finding regarding these documents. Counsel asserted that the applicant joined the

Jamaica Muslim Center over twenty years ago and that there are many members of the Center. Counsel asserts that they do not know the people contacted at the Center and their knowledge of the applicant. Counsel states that the applicant does not attend the Center as often as he did in the past and that not all the present members would be familiar with him. Counsel asserts that the applicant is confident that if the manager or person in charge of membership were contacted, his membership could be verified. Counsel submitted several previously submitted documents.

The director denied the application, finding that none of the other documents submitted by the applicant were credible or verifiable. The director found that the applicant could have produced copies of the money transactions he made with Western Union during the period in question, rather than submitting a letter that stated that the applicant was a preferred customer. The director found that the doctor's note submitted in response to the Notice of Intent to Deny (NOID) was clearly fraudulent because it was not dated. The director stated that it was highly unlikely for a doctor to remember his patient, whom he treated in 1982, and diagnoses he made, without looking at some records available in the medical office. The director stated that the applicant could have submitted his medical records from that period instead of the doctor's letter. The director noted that the date stamp on the envelope submitted was not clear or legible and that it had no evidentiary value since there were no U.S. postal stamps on it. The director also noted that the affidavits submitted by the applicant did not show any specific personal knowledge of his whereabouts during the relevant time. The director concluded that counsel's response to the NOID was the submission of fabricated evidence and found the applicant inadmissible under I.N.A. section 212(a)(6)(C) for willful misrepresentation of a material fact because he submitted a fraudulent.

On appeal, counsel for the applicant asserts that the applicant has established his eligibility for adjustment under the LIFE Act. He asserts that the applicant is unable to communicate properly in English and that his ability to express months and dates correctly is inadequate. Counsel asserts that the applicant never submitted a fraudulent Form I-94, that he only provided an I-94 number and passport number because he lost his passport in 1990. Counsel asserts that just because the doctor's letter is not dated does not make it fraudulent. Counsel asserts that two letters submitted by the applicant's previous attorney to the USCIS were not dated, but were nevertheless accepted by USCIS. Counsel reasons that it follows that the doctor's letter should also be accepted. Finally, counsel asserts that the documents submitted tend to prove the applicant's residence in the United States during the statutory period.

The issue in this proceeding is whether the applicant has provided sufficient credible evidence to demonstrate that he was continuously physically present in the United States during the requisite period.

The following evidence relates to the requisite period:

Employment Letters

- A letter dated March 15, 1991, from [REDACTED], manager at Mimosa Restaurant in New York City. [REDACTED] states that the applicant worked at the restaurant from January 18, 1981, to April 21, 1984, as a bus boy. [REDACTED] states that the applicant was paid \$110 per week plus tips and that he was paid in cash;
- A letter dated June 13, 1991, from [REDACTED] manager of Houlihan-Parnes Realtors. [REDACTED] states that the applicant worked as a cleaner with the company from May 19, 1984, to June 25, 1987, and that he was paid \$130 per week; and,
- A letter dated May 23, 1991, from [REDACTED] manager at ELM Electric & Hardware Supply, Co. [REDACTED] states that the applicant had worked for his company from July 16, 1987, to November 18, 1990. [REDACTED] attests that the applicant's weekly salary was \$145.

These letters can be given little evidentiary weight because they lack sufficient detail and information required by the regulations. Specifically, the employers failed 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, the employers also failed to declare which records their 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.

Letters and Affidavits

- Affidavits from [REDACTED] and [REDACTED]. These affidavits can be given little weight as evidence of the applicant's entry to the United States prior to January 1, 1982, or his continuous residence and physical presence during the required period. None of these affidavits were verifiable as they contained no identification or contact information. No evidence was submitted to establish that any of the affiants was present in the United States during the statutory period. None of the affiants established that they had proof or direct personal knowledge of the applicant's arrival in the United States. None of the affiants provided other details about the applicant's life in the United States;
- A letter from the Jamaica Muslim Center. This letter can be given little evidentiary weight as the information contained could not be verified. The interviewing officer contacted the Center and was told that they had no recollection of the applicant and did not recognize his name. The staff at the Center searched its records and, after five days, was unable to verify the information contained in the letter. See 8 C.F.R. § 245a.2(d)(3)(i).

For the reasons noted above, these affidavits 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. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants indicated how they recalled specifically when they first met the applicant. In addition, although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

In addition to the numerous letters and affidavits the applicant has submitted in support of his application, he has provided the following evidence of residence in the United States during the requisite period:

- A letter from [REDACTED] stating that the applicant was under his treatment from October 1982, to December 1982, and that the applicant's last visit to his office was in January 1983.

Minimal weight can be given to this letter because it lacks any indication of what records were consulted. [REDACTED] fails to provide basic details, including what he treated the applicant for. Furthermore, the letter is not dated. Counsel asserts that just because the doctor's letter is not dated does not make it fraudulent. Counsel asserts that two letters submitted by the applicant's previous attorney to the USCIS were not dated, but were nevertheless accepted by USCIS. Counsel reasons that it follows that the doctor's letter should also be accepted. The AAO notes that there is a significant distinction between a letter from a claimed treating physician being submitted as evidence of the applicant's statutorily required continuous residence and a letter from the applicant's former attorney, used as a cover sheet to submit forms or documents or to inquire about the status of a case. The latter would not be used to determine a statutory element of the LIFE Act, while the former would. The date when letter from the former attorney was filed could be verified, e.g., by a received date stamp, the doctor's letter could not.

- A form letter from Western Union dated January 12, 1982;
- A money order receipt dated February 14, 1984, from State Savings and Loan Association;
- A money transfer receipt from Atlantic Bank of New York, dated July 23, 1984; and,
- A letter from Pubali Travel Tours indicating that the applicant bought a ticket to Bangladesh from them for travel between August 17, 1982, to September 20, 1982.

None of these documents establish that the applicant was continuously physically present and residing in the United States during the requisite time period. The Western Union letter, money order receipt, and money transfer receipt list the address of [REDACTED], who stated in a letter that the applicant came to the United States in 1980 with a visitor's visa and that the applicant used his address for all of his important matters. Although consistent with the address given by the applicant on his Form I-687, and although they might be evidence that the applicant was in the United States on the dates indicated, they can be given minimal weight as evidence of the applicant's required continuous residence. This is correspondence addressed to the applicant at an address where the applicant received mail, not where he claimed to have resided. Even if these documents were credible, they would only establish that the applicant received mail in the United States on the stated dates, not that he was continuously physically present and residing in the United States from before January 1, 1982 through May 4, 1988.

The record of proceedings contains various other documents, including a fill-in-the-blank letter from [REDACTED], attesting that the applicant lived with him from January 1988, to at November 1990, and a fill-in-the-blank letter from [REDACTED] dated August 15, 1991, attesting that the applicant lived with him from December 1990 to the date the letter was written. None of this evidence addresses 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 on November 4, 1980, at New York, New York, and to have resided for the duration of the requisite period in Florida and 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.

Furthermore, the applicant has failed to address the inconsistencies and contradictions about how and when he first entered the United States. Counsel asserts that the finding that the applicant previously submitted a fraudulent Form I-94 is not supported by any facts or reasons. The record contains an apparently original Form I-94, containing the applicant's name and date of birth, with a stamp indicating that he was admitted to the United States on September 20, 1982, at New York, New York, as a B-2 visitor for pleasure. The record also contains a Memorandum from the Legalization Unit in New York, New York, indicating that the applicant stated under oath that he purchased the Form I-94 from someone in Florida. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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).

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.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, detracts from the credibility of his claim. 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 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.