



U.S. Citizenship
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Services

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FILE:

MSC 01 272 60357

Office: San Francisco

Date: **APR 20 2009**

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.

John F. Grisson, Acting Chief
Administrative Appeals Office

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

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant asserts that he has submitted sufficient evidence to establish the requisite continuous residence. Counsel submits additional evidence on appeal.

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 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 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.

In the Notice of Intent to Deny (NOID), dated September 27, 2006, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the evidence consisted of affidavits and letters that were lacking in detail. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated September 29, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID, but the evidence provided failed to overcome the reasons for denial stated in the NOID.

The issue in this proceeding 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. The applicant submitted evidence, including letters and affidavits as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Affidavits & Letters

The applicant submitted the following:

1. Affidavits from [REDACTED], and [REDACTED]. Mr. [REDACTED] attests that the applicant had been his roommate from August 1981 to December 1984; Mr. [REDACTED] attests that the applicant had been his roommate from January 1985 to April 1988; and, [REDACTED] attests that the applicant had been his roommate from May 1988 to April 1990. [REDACTED] states that the apartment that the applicant shared was located at [REDACTED] however, the other two affiants do not indicate the location of the residence during the period when the applicant was their roommate. Also, besides stating that the applicant shared expenses with them, the affiants do not indicate how they became acquainted with the applicant, or provide any additional details, such as the relationship with the applicant that led to room-sharing with the applicant, specifics of the room-sharing arrangement, and how the room-sharing arrangement ended.
2. An affidavit from [REDACTED], attesting that he has known the applicant to have resided in the United States since 1981. [REDACTED] also attests that the applicant is his friend; that he has given the applicant \$500; that they frequently visited each other; and, that the applicant once attended his birthday party. The affiant, however, does not indicate where he first met

the applicant; how he dates his acquaintance with the applicant; how frequently and on what occasions he and the applicant visited each other; and, whether the applicant has been a continuous resident in the United States since their acquaintance.

3. An affidavit from [REDACTED] attesting that he has known the applicant to have resided in the United States since 1981. [REDACTED] also attests that the applicant is his good friend; that he has seen the applicant at religious gatherings; and, when the applicant “desired” he has provided financial support to the applicant. The affiant, however, does not indicate where he first met the applicant; how he dates his acquaintance with the applicant; when and under what circumstances he provided financial support to the applicant; how frequently he saw the applicant at religious gatherings; and, whether the applicant has been a continuous resident in the United States since they became acquainted.
4. An affidavit from [REDACTED] attesting that he has known the applicant to have resided in the United States since 1981. [REDACTED] also attests that the applicant did odd jobs, such as typing, to earn a living, and that the applicant once typed project papers for him. The affiant, however, does not indicate how he dates his acquaintance with the applicant; how he knew that the applicant did odd jobs; how frequently the applicant did odd jobs; and, whether the applicant has been a continuous resident in the United States since they became acquainted.
5. An affidavit from [REDACTED] attesting that he has known the applicant for a “long time,” and that the applicant did his typing during his studies. The affiant, however, does not provide any additional details, such as when and where he first became acquainted with the applicant; how he dates his acquaintance with the applicant; how frequently and during what period the applicant typed papers for him; and, whether the applicant has been a continuous resident during the requisite period.

As noted above, the affidavits submitted are lacking detail. These evidentiary items, therefore, are not probative. As such, this evidence does not establish the applicant’s continuous residence.

The record of proceedings also contains a letter from [REDACTED] – San Jose (California), stating that he has known the applicant since 1981. [REDACTED] also states that the applicant attended Sikh Gurdwara San Jose Sunday services and other religious functions. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letter from [REDACTED] – San Jose (California) does not comply with the above cited regulations because it does not: state the address where the applicant resided during attendance ...(membership) ... period; establish in detail that the author knows the applicant and has personal knowledge of the applicant’s whereabouts during the requisite period;

establish the origin of the information being attested to; and, that attendance (membership) records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letters are not deemed probative and are of little evidentiary value.

Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.