



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK Date: APR 20 2009

MSC 01 345 62648

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).

IN 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.

John F. Grissom
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, 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 due to the passage of time, the applicant is not in possession of legal documents that he had used to gain entry in the United States; the applicant is unable to establish that he was physically present and continuously resided in the United States before January 1, 1982; and he is unable to obtain any further documents from the affiants.

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. Section 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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 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. Here, the applicant has failed to meet this burden.

On his Affidavit for Determination of Class Membership dated November 6, 1990, the applicant indicated that he entered the United States with a non-immigrant visa on July 31, 1980. On his Form I-687 application, the applicant indicated that he departed the United States in October 1982 and reentered on November 15, 1982, with a non-immigrant visa; claimed to have six children who were born in Bangladesh and listed his youngest son's date of birth as December 11, 1981 and his youngest daughter's date of birth as August 7, 1983.

On his LIFE application, the applicant amended his youngest son's date of birth to reflect December 11, 1987. At the time of his LIFE interview, the applicant indicated that his wife had never visited United States, Canada or Mexico during the requisite period.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- A statement from [REDACTED], who indicated that he met the applicant at a flea market in 1985 at Long Island Roosevelt. The affiant asserted that he used to see the applicant everyday "since he used to stay with me."
- An additional statement from [REDACTED] who attested to the applicant's residences in Brooklyn, New York from September 1981 to June 1985 and in Bronx, New York from July 1985 to August 1989. The affiant asserted that he first met the applicant at a friend's house.
- A letter from a previous manager (name is indecipherable) at Thomas Deli Market Inc., in New York City, who attested to the applicant's employment as a stock boy from December 1986 to December 1988. The affiant indicated that the applicant received his wages in cash as he had no social security number.
- An affidavit from [REDACTED] who indicated that he was the neighbor/co-worker/.landlord of the applicant and attested that the applicant resided/worked in the

United States during the requisite period. The affiant asserted that he had contact with the applicant during this period.

- An affidavit from [REDACTED], who attested to the applicant's residence in the United States since August 1981. The affiant asserted that he had contact with the applicant on a weekly basis during the requisite period.
- An affidavit from [REDACTED], a general contractor in Brooklyn, New York, who attested to the applicant's employment as a helper/painter from August 1981 to October 1985.
- An affidavit from [REDACTED] who indicated that the applicant resided with him at [REDACTED] Brooklyn, New York from September 1981 to June 1985.

On June 10, 2008, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. The applicant was also advised that: 1) as his spouse has never visited North America, he had to have been in his native country, Bangladesh, prior to the birth of his youngest children; 2) the director was unable to verify the information from Thomas Deli Market, Inc.; 3) public records were reviewed and there was no evidence of an entity doing business under the name [REDACTED] General Contractor; and 4) he failed to provide evidence of his entries with a nonimmigrant visa into the United States.

The applicant was granted 30 days in which to submit a response. The director, in denying the application, concluded that the applicant had failed to submit any additional evidence for consideration within the time allotted.

On appeal, neither counsel nor the applicant has addressed the inconsistencies outlined in the director's Notice of Intent to Deny.

The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as he has presented contradictory documents, which undermines his credibility. The adverse information tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period, and the credibility of all documentation submitted in support of such claim.

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). Neither counsel nor the applicant has submitted any competent objective evidence to resolve the inconsistencies in the record

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.