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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEW YORK Date:

APR 22 2009

MSC 02 164 62167

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 the director failed to provide him with a copy of the affidavit dated August 12, 1996. Counsel asserts that the 2007 Adjudicator's Field Manual states that if a person being questioned exhibits difficulty in speaking and understanding English, arrangements should be made for use of an interpreter. Counsel asserts, "[b]y not giving an adequate and timely notice, by not providing an interpreter, and by not allowing the applicant sufficient time to be represented by a lawyer of his choosing, the Service has violated the applicant's due process and equal protection rights."

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 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.

The record contains two sworn statements executed on April 23, 1994 and August 12, 1996. In the first statement, the applicant admitted that he first arrived in the United States in 1982. In the second statement, the applicant admitted that he first arrived in the United States in February 1985 through the Mexico-San Diego Border; he departed the United States in 1985 or 1986 and in 1987; he was married in Bangladesh in 1984; and he had four children born in Bangladesh in 1985, 1987, 1993 and 1996.

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

- An affidavit from [REDACTED] of Los Angeles, California who attested to the applicant's Los Angeles residence since November 1981. The affiant indicated he met the applicant at a Bangladesh association meeting in November 1981 and since that time has seen the applicant frequently.
- A month to month lease agreement entered into on February 1, 1981 between the applicant and [REDACTED] for premises at [REDACTED], Los Angeles, California.

The applicant also submitted envelopes that have no probative value or evidentiary weight as they were either postmarked subsequent to the period in question or did not contain a postmark.

On May 22, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of contradictory information contained in the record. The director noted, in pertinent part:

In an affidavit given to the Immigration Officer you claimed under oath that your first entry into the United States was in 1985 and then you re-entered the United States in 1986. You then rescinded that date and indicated that you entered the United States the first time on February 4, 1982.

The next contradiction involves your trip to Mexico. You testified on April 12, 2004, that you traveled to Mexico on September 8, 1987 and returned to the United States on September 28, 1987. However, in your affidavit on August 12, 1996, you claimed that you never went to Mexico because you don't know anyone there.

A further contradiction is you claimed on August 12, 1996, that you went to Bangladesh in 1987. However, during your interview on April 12, 2004, you claimed that you never went to Bangladesh in 1987.

Another contradiction is that on August 12, 1996, you claimed that you have four children that were born in Bangladesh in 1985, 1987, 1993 and 1996. However, on your I-485 that was filed on March 13, 2002, and signed by you, you claim that your children were born in 1981, 1988, 1992 and 1998. You further contradict yourself during your interview of April 12, 2004, when you testify that your children were born in 1981, 1988, 1996 and 1988.

On your affidavit of August 12, 1996, you claimed to the Immigration Officer that your wife never visited the United States, however at your interview on April 12, 2004, you claim that she visited the United States in August 1987. It would appear that you may have made more than one trip to Bangladesh during the statutory period, due to the years your children were born.

Counsel, in response, submitted an affidavit from the applicant, who indicated, in pertinent part:

That I do not remember submitting any such affidavit on August 12, 1996 prepared by me. All I remember is that I appeared at 26 Federal Plaza on August 12, 1996 in order to pick up my work authorization. At that point, I was taken inside one of the offices and asked a number of questions. I did not understand most of the questions as there was no interpreter made available. At the end of the questioning, I was asked to sign a piece of paper. No explanation was given as to what was written in that piece of paper. Nor anyone did read it to me and made me understand the contents of it. I was not even given a copy of it.

Counsel and the applicant both requested a copy of the affidavit dated August 12, 1996.

The director, in denying the application, noted that U.S. Citizenship and Immigration Services (USCIS) records reflected that on August 12, 1996, the applicant was interviewed to establish eligibility for the sub-class membership under CSS. The applicant was sworn in and the interviewing officer recorded all the applicant's answers on a Form I-215W. The director further noted that USCIS did not provide an interpreter and the applicant did not request one. At the end of the interview, the interviewing officer asked, "Do you understand all the questions?" to which the applicant answered "Yes," and signed the statement. The director determined that it was clear the applicant was making an overt attempt to change certain events and circumstance after the fact in an apparent effort to explain away the inconsistent statements during the interviews uncovered during the review and noted in the Notice of Intent to Deny.

On February 24, 2009, a notice was sent to the applicant and counsel in order for the applicant to submit the original birth certificates of his children, [REDACTED] and [REDACTED]. Counsel was also provided a copy of the affidavit signed by the applicant on August 12, 1996. Counsel, in

response, provided the birth certificates of [REDACTED]), which reflect their dates of birth as August 18, 1981 and October 6, 1988, respectively. According to each birth certificate, the information was extracted from the Birth Register Book.

The USCIS has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits should be analyzed to determine if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The applicant claimed on his Form I-687 application employment throughout the requisite period; however, he provided no evidence to support his claim.

The birth certificates raise suspicion of the claimed dates of birth as the certificates were not registered with the Office of the Registres of Births and Dates until October 28, 2007; over 26 and 19 years after the births of the children. Neither an adequate explanation was provided why it took over 19 and 26 years to register the births nor any supporting documentation was provided to determine what means were used to establish the dates of birth due to the passage of time between the dates of birth and the date of registration.

Counsel's statements must be weighed in conjunction with all the evidence in the file, which only includes one affidavit and a month to month lease agreement purportedly entered into on February 1, 1981. [REDACTED], in his affidavit, failed to state the applicant's place of residence during the requisite period, provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Furthermore, the applicant did not list any affiliation with any religious organization or association during the requisite period at item 34 on his Form I-687 application.

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).

On two separate occasions, the applicant admitted in a sworn statement that he entered the United States subsequent to January 1, 1982. The record does not support counsel's assertion that the applicant had difficulty in speaking and understanding the English language. In light of his sworn statements, the documentary evidence submitted by the applicant, in an attempt to establish continuous residence in the United States during the requisite period, cannot be considered as having any probative value or evidentiary weight.

Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I. & N. Dec. 213 (BIA 1965).

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.