



U.S. Citizenship  
and Immigration  
Services

L2

[REDACTED]

FILE:

[REDACTED]  
MSC 02 080 62441

Office: NEW YORK

Date:

DEC 08 2009

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. 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.

  
Perry Rhew  
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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish he satisfied the English and civics requirements for the immigration benefit sought.

On appeal, counsel states that the applicant is unable to pass the English language and citizenship skills test due to mental disability. In support of that assertion, counsel submits a psychological evaluation from [REDACTED] Ph.D., who opines that the applicant's ability to learn new material is so poor that "it is impossible for him to learn any new material at this point in his life." Dr. [REDACTED] states that it is impossible for the applicant to learn to speak, read and write in the English language, and to learn elementary United States history and civics sufficiently to pass examinations in those subjects. Dr. [REDACTED] further states that the applicant is suffering from a Major Depressive Disorder, a Reading Disorder, and Disorder of Written Expression. It is Dr. [REDACTED] opinion that that these symptoms were caused by the applicant being hit over the head with a bamboo stick in 1978, which caused the applicant to lose consciousness and be hospitalized. Dr. [REDACTED] report is not supported by medical records from the 1978 occurrence or any treatment for that incident since that time.

On November 23, 2001, the applicant was examined by Dr. [REDACTED]. Dr. [REDACTED] completed a Form I-693 (Medical Examination of Aliens Seeking Adjustment of Status). The doctor noted that the applicant suffered from no apparent defect, disease, or disability, including mental defects or mental retardation. According to the applicant, he has maintained gainful employment while in the United States, at least until May 11, 2005 when he signed a Form I-687. Dr. [REDACTED] report and the applicant's ability to maintain gainful employment are inconsistent with the findings of Dr. [REDACTED] who does not indicate that he has reviewed any medical documentation pertaining to the applicant's stated injury in 1978. In order to receive a waiver from the requirements of the above mentioned English language and United States citizenship skills test due to mental disability, the applicant must demonstrate that any impairment results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. The applicant has not demonstrated that he is entitled to the requested waiver, and the director's determination shall be upheld.

Beyond the decision of the director, the applicant is not entitled to the immigration benefit sought because he has failed to establish his continuous residence in the United States throughout the requisite period.

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 through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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 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 petitioner 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 petitioner 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 or petition.

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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The record contains the following evidence which is material to the applicant's claim:

- The applicant submitted witness statements from four individuals in support of his application. Those statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements provided do not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship, have knowledge of the facts

asserted. The witness statements submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value.

- The applicant submitted a statement signed by [REDACTED] Manager, Tal Bagels which certifies that the applicant was employed by that organization as a baker from July of 1985 to June of 1990. The statement is dated May 9, 2005 and states that the applicant's address was [REDACTED]. The Form I-687 was executed by the applicant on May 11, 2005 and lists all addresses by the applicant since his arrival in the United States. The applicant does not list the referenced address as a place of residence from the date of his stated arrival (February, 1981) until the date the Form I-687 was signed. Further, the director noted in the NOID issued in this proceeding that according to the records of the New York State Division of Corporations, Tal Bagels was established in 1988. Thus, the applicant could not have been employed by that organization in 1985 as stated in the employment attestation. The attestation, therefore, is of no probative value.

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 employment statements submitted by the applicant fail to provide the information required by the above-cited regulation. The statements do not: show periods of layoff (or state that there were none); declare whether the information provided was taken from company records; or identify the location of such company records and state whether they are accessible or in the alternative why they are unavailable. For this additional reason, the employment statement is not deemed probative and is of little evidentiary value.

- The applicant submitted an attestation signed by [REDACTED] Public Information, [REDACTED] which states that the applicant is a member of the Muslim community and that he has been "since 1981 to still." Mr. [REDACTED] states that the applicant attended Friday prayer services, and other prayer services. The director noted in a NOID issued in conjunction with the filing of the applicant's Form I-687, a separate proceeding, that USCIS personnel contacted the organization on November 20, 2007 and was informed that the organization has no membership records prior to 1993. The attestation does not provide a basis for the information presented. For these reasons, the attestation is not deemed probative and is of no evidentiary value.
- The applicant presented an attestation signed by [REDACTED] President, Bangladesh League Of America, Inc. wherein Mr. [REDACTED] states that the applicant is closely known to him "since long as he was a member of our association from January [of] 1982 to October [of] 1990."

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 attestations presented by the applicant do not comply with the above cited regulation because they do not: state the address(es) where the applicant resided during his 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 indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. For this additional reason, the attestations are not deemed probative.

- The applicant submitted a hand written merchandise receipt dated April 5, 1984. The receipt is of little evidentiary value as it does not provide the applicant's address at the time of sale, nor does it provide a salesman's name, although the receipt has provided lines for the inclusion of that information.
- The record contains a Form I-687 signed by the applicant on June 12, 1991. The residence information included on that document for the time period February of 1981 to June of 1985 [REDACTED] contradicts the residence information provided by the applicant on the Form I-687 dated May 11, 2005 wherein the applicant stated, under penalty of perjury, that he resided at [REDACTED] from February of 1981 to June of 1985.

The contradictory residence information has not been explained and is material to the applicant's claim as it has a direct bearing on the applicant's whereabouts during the requisite period. 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. 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, 591-92 (BIA 1988).

- The applicant submitted a statement signed by [REDACTED] Managing Director, World Inter Aviation Limited, which states that the applicant was issued an airline ticket in January of 1980 in Bangladesh for travel to London, and then the United States on British Airways. Mr. [REDACTED] then states that: the ticket number is [REDACTED] it was issued on April 30, 1983; and the flight number is BA-144. The statement is of no probative value because of the unexplained contradictory information provided about the date of ticket issuance.

Based upon the foregoing, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.