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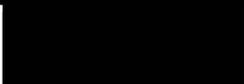


U.S. Citizenship
and Immigration
Services

L2



FILE:



Office: NEW YORK CITY

Date: FEB 02 2009

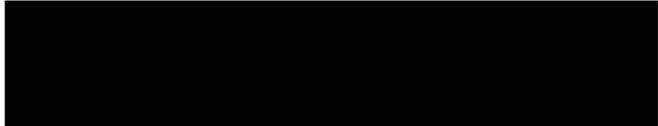
consolidated herein]
MSC 02 252 60866

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. 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.

for John H. Vaughan
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 in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that the director did not properly evaluate the evidence in the record. The applicant asserts that he has provided sufficient evidence to establish that he continuously resided in the United States in an unlawful status during the years 1981 to 1988.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 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 its amenability to verification. See 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 applicant, a native of Ivory Coast who claims to have lived in the United States since January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 9, 2002.

In a Notice of Intent to Deny (NOID) dated July 10, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant responded by submitting a copy of a previously submitted affidavit. On September 18, 2007, the director issued a Notice of Decision denying the application, indicating that the evidence of record failed to establish the applicant’s continuous unlawful residence in the United States during the requisite period for LIFE legalization.

On appeal the applicant asserts that the director did not properly evaluate the evidence in the record. The applicant asserts that he has provided sufficient evidence to establish that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and submits supplemental information on one of the affidavits previously submitted.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim to have arrived in the United States before January 1, 1982, and resided continuously in the country in an unlawful status during the requisite period for LIFE legalization, consists of the following:

- A notarized letter of employment from [REDACTED], owner of [REDACTED] in Bronx, New York, dated June 15, 1991, stating that the applicant was employed from March 1981 to April 1985, at first as a trainee and later at the counter.
 - A statement by [REDACTED] a public information official of Masjid Malcolm Shabazz in New York City, dated June 20, 1991, stating that the applicant was a member of the Muslim community and "has been here since January of 1981."
 - A statement from the clerk of [REDACTED] in New York City, dated February 13, 1990, stating that the applicant had resided at the hotel from January 1981 to September 1994.
 - A statement from the clerk of [REDACTED] in New York City, dated February 13, 1990, stating that the applicant had resided at the hotel from October 1984 to August 1987.
- Notarized letters – dated in 1991, 1992 and 2004 – from six individuals who claim to have known the applicant in the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

The file contains conflicting information from the applicant about his residential addresses in the United States during the 1980s. On a Form I-687 (application for status as a temporary resident) dated July 8, 1991, the applicant listed the following as his addresses during the 1980s:

- [REDACTED], New York, New York, from January 1981 to September 1987;
- [REDACTED], New York, New York, from October 1984 to August 1987;

- [REDACTED] Bronx, New York, from September 1987 to the present.

On a Form G-325A (Biographic Information) he filed with a Form I-589 (Request for Asylum in the United States) in August 1996, the applicant identified his address in the United States as [REDACTED] New York, New York, from January 1981 to the present (1996).

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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

The employment letter from [REDACTED] owner of [REDACTED] in Bronx, New York, dated June 15, 1991, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the letter did not indicate the applicant's address during the period of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. Nor was the letter supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the letter has limited probative value. It is not persuasive evidence that the applicant resided in the United States before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The letter from [REDACTED] of Masjid Malcolm Shabazz in New York City, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter from [REDACTED], dated June 20, 1991, vaguely stated that the applicant was a member of the Muslim community and "has been here" since January of 1981, but did not state exactly when his membership began, did not state where the applicant lived at any point in time between 1981 and 1988, did not indicate how and when [REDACTED] met the applicant, and did not state whether his information about the applicant was based on personal knowledge, the mosque's records, or hearsay. Since the letter did not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. The letter

is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letters from [REDACTED] and [REDACTED], dated February 13, 1990, were signed by individuals carrying the title of clerk who attest to the applicant's residence at the hotels from January 1981 to September 1994 and from October 1984 to August 1987, respectively. The applicant has not explained how he could have resided at both hotels simultaneously from October 1984 to August 1987. Although the letters are from two different hotels, they have identical wording and formats. The signatories of the letters do not identify the source of their information, such as specific business records, about the applicant's residence at the hotels. Nor were the letters supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at those addresses during the years indicated. In view of their myriad conflicts and deficiencies, the letters have no probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The notarized letters in the record are from acquaintances who claim to have known the applicant since the 1980s. The authors provide remarkably few details about the applicant's life in the United States, such as where he lived, and their interaction with him over the years. The notarized letters are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationship with the applicant in the United States during the 1980s. Only one individual claims to have known the applicant before January 1, 1982. Three individuals – [REDACTED] and [REDACTED] – only provided information about the applicant's trip to Canada in 1987 and nothing about his residence in the United States. In view of these substantive shortcomings, the notarized letters have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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