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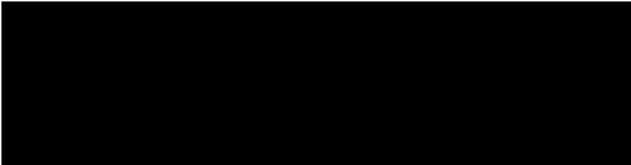
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529-2029



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date: FEB 03 2009

MSC 01 317 60037

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.

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 on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant states that the director failed to give adequate weight to the evidence submitted. 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 29, 2007, the director requested that the applicant submit evidence establishing that he had entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988, and listing all absences from the United States. The director noted that the applicant stated that he had resided in the United States since prior to January 1, 1982, and he submitted evidence, including letters, and affidavits, to establish his continuous residence during the requisite period. However, the record reflects that the applicant was married in Algeria in 1982, and that he had a child born in Algeria in July 1983. The director determined, therefore, that the applicant cannot establish the requisite continuous residence. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated November 30, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant failed to submit additional evidence in response to the NOID.

On appeal, counsel states that the director erred in failing to "adequately review submitted material." Counsel also states that he is submitting additional documentation to rebut the director's denial. Counsel's submission on appeal consists of notarized letters from [REDACTED] and [REDACTED].

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 various documents, including letters and affidavits, as evidence to support his Form I-485 application. Here, the submitted evidence is neither credible, nor probative.

Employment Letters

The applicant submitted two letters of employment, from "[REDACTED]" and [REDACTED]. [REDACTED] Manager of [REDACTED] states that the applicant had been employed as a Busboy from April 1981 to January 1987, and, was paid cash. It is noted that the letter does not have the full address of the restaurant as the address is listed only as: [REDACTED] (Between [REDACTED]

[REDACTED], and does not indicate a City, State, or Zipcode. In addition, although the letter is notarized the full name of the person who purportedly signed as [REDACTED] is not provided. This letter, therefore, is not probative as it cannot be verified.

[REDACTED] signed his letter as a "Former Manager" of [REDACTED], located at [REDACTED], New York, NY 10003. Mr. [REDACTED] states that the applicant had been employed as a Counter Person, from February 1987 to August 1989, and, was paid cash. It is noted that Mr. [REDACTED] does not indicate during what period he was the [REDACTED], or whether he is still employed with Hot Spot International Café.

It is also noted that the letters failed to provide the applicant's address at the time of employment, failed to show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). These letters, are therefore, not probative as they do not conform to the regulatory requirements.

Affidavits and letters

The record reflects the following:

1. Notarized letters, dated January 11, 2008, from [REDACTED] and [REDACTED]. Both affiants attest to knowing the applicant to have resided in the United States since 1982. The affiants, however, do not indicate when in 1982 they first became acquainted with the applicant in the United States, how they dated their acquaintance with the applicant, and whether, and how, they maintained contact with the applicant since that time. These letters are, therefore, not probative as to the applicant's continuous residence in the United States from prior to January 1, 1982.
2. An affidavit from [REDACTED] stating that the applicant lived with him from October 1981 to January 1987. However, the filed-in affidavit appears to have been altered as the information pertaining to the applicant is in a different print. This affidavit, therefore, is not probative.

The record of proceedings also contains a letter from [REDACTED] of the [REDACTED], located at [REDACTED] Brooklyn, New York, stating that the applicant has been a member since November 1981. 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 the Islamic Council of America does not comply with the above cited regulations because it does not: state the address where the applicant resided during the 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 letter are not deemed probative and are of little evidentiary value.

As noted by the director, at his interview on August 1, 2002, the applicant stated that since his entry into the United States on February 21, 1981, he had not departed the United States between January 1, 1982 and May 4, 1988, and that his wife has never been in the United States. However, on his Form G-225A, the applicant indicated that he was married in Algeria in 1982, and had a child born, in Algeria, on July 23, 1983.

It is also noted that the applicant testified in a Record of Sworn Statement in Affidavit Form, dated November 4, 1997, before an immigration officer, that he had lived in the United States for 10 years. This testimony indicates that the applicant has been residing in the United States since 1987, and not since 1981 as he claims, and as indicated on the affidavits and apartment lease he submitted in support of his application.

These discrepancies cast considerable doubt on the applicant's claim that he has resided continuously in the United States since prior to January 1, 1982. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

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.