



U.S. Citizenship
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FILE:

[Redacted]

Office: GARDEN CITY

Date: FEB 03 2009

MSC 02 026 60425

IN RE: Applicant:

[Redacted]

APPLICATION:

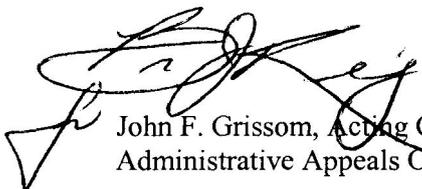
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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, Garden City, 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 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 asserts that the applicant has submitted sufficient evidence to establish his continuous residence. 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).

“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.

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 July 20, 2007, the director notified the applicant that he had failed to establish that he had resided continuously in an unlawful status during the requisite period. The director noted that the applicant testified at his interview that he had resided in Pakistan during 1987-1988. The director also noted that the applicant had submitted affidavits that were not credible or amenable to verification. In addition, the director also noted that the applicant had submitted a Form I-687 application, dated September 15, 1990, that revealed various inconsistencies in his claimed residence and employment information. The director granted the applicant thirty (30) days to submit additional evidence.

In his response to the NOID, counsel referenced an affidavit from the applicant stating that he had been defrauded in connection with the preparation of his Form I-687 application, dated June 20, 1990, by a preparer named “[REDACTED]” Counsel, asserts that the applicant cannot be held responsible for the fraud perpetrated by the preparer in connection with the applicant’s Form I-687 application. Counsel further states that as the USCIS is aware of the fraud committed by criminals, and the applicant has admitted that he was defrauded, therefore, his “office will not address” the applicant’s Form I-687, dated June 20, 1990.

In the Notice of Decision, dated September 12, 2007, the director denied the application noting that counsel for the applicant responded to the NOID, but failed to overcome the reasons for denial stated in the NOID. The director also noted that in his response to the NOID the applicant indicated that he had been a victim of fraud in connection with his Form I-687 application, and had described how he, allegedly, had been defrauded by [REDACTED] the purported preparer. However, the record of proceedings reflects that the applicant had been implicated in connection with Form I-688A fraud in [REDACTED] that the brokers involved were prosecuted and convicted; and, that the

applicant's Form I-688A had been revoked due to the applicant's failure to respond or rebut the Service's Notice of Intention to Revoke (NIR).

The applicant's counsel claims that the applicant was not assisted by an attorney but by an individual who allegedly defrauded the applicant in connection with the applicant's Form I-687 application, dated June 20, 1990, to the applicant's detriment. However, USCIS is not responsible for action, or inaction, of the applicant's representative.

At this late stage, the applicant cannot avoid the record he has created. As noted above, the record of proceeding contains a Form I-687, dated June 20, 1990, which counsel contends should, in effect, be excluded in a determination of the applicant's claim by virtue of the fact that the applicant has admitted that he had been defrauded by the preparer of this Form I-687. The content of the Form I-687, however, is an indelible part of the record. Contrary to counsel's assertion, the applicant is attempting to make a mockery of the immigration law because he has submitted a fraudulent application. Furthermore, even if the content of the Form I-687 is not used, as counsel suggests, to determine the truth of the matter that it sought to convey, there is no basis to exclude the contents of the form in assessing the veracity of the applicant's claim. The AAO will, therefore, examine the entire record and make its determination of the applicant's eligibility based on the entire record as constituted.

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 evidence, such as employment letters, and affidavits, to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

The record reflects that the applicant has submitted questionable documentation. For example, on his Form I-687 application, signed on June 20, 1990, the applicant indicated that he resided at [REDACTED], Astoria, New York 11103, from November 1981 to December 1982, and at [REDACTED], Hawthorne, California 90250, from January 1983 to July 1989. However, on his Form I-687 application, signed on September 15, 1990, the applicant indicated that he resided in Brooklyn, New York, from October 1980 to August 1987, and in Indio, California, from October 1987 to May 1989. Also, none of the four employers the applicant listed on his Form I-687, signed on June 20, 1990, match the employers he listed on his Form I-687 application, signed on September 15, 1990. Also, on the first Form I-687 application, the applicant listed 5 children, 4 sons, and one daughter. However, on the second application he listed six children, 4 boys and 2 daughters. It is noted that on both applications the eldest child was born in 1988, over ten years before the applicant completed these applications. The applicant has failed to reconcile these discrepancies in the record.

In addition, the record reflects that the applicant has been identified as having procured an immigration-related benefit through the payment of a bribe to an immigration officer working undercover in a fraud investigation named "[REDACTED]." The applicant has been

implicated in immigration-related fraudulent activities, and it is unlikely that any of his “notarized” documents are valid. Also, the affidavits submitted are not corroborated by other evidence in the record and are not probative given the evidence of record of falsified application(s).

The applicant has failed to submit sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. As also noted above, the discrepancies in the applicant’s claimed entry date and unlawful residence, and the record of evidence, cast considerable doubt on the applicant’s claim that he resided in the United States since 1981 in an unlawful status. Accordingly, the evidence submitted by the applicant to establish his continuous residence, is deemed not credible. 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.