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U.S. Citizenship
and Immigration
Services

L2



FILE:

MSC 02 254 60005

Office: PHILADELPHIA

Date: FEB 04 2009

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. 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On October 31, 2003, the Director, Philadelphia, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not established that he met the minimum physical presence required under the LIFE Act. The director stated that the applicant did not submit documentary evidence that he was physically present in the United States in 1982. The director noted discrepancies and irregularities in a doctor's letter the applicant submitted and that the applicant failed to respond with a plausible explanation when confronted with those inconsistencies. The director noted that the applicant submitted several affidavits attesting to his residence in the United States since 1983 and a lease agreement that were not originals and were not notarized.

On appeal, counsel for the applicant asserts that the applicant has consistently stated that he entered the United States in 1981. Counsel asserts that the director's request that the applicant submit tax or bank records from the statutory period is unreasonable because the applicant was undocumented at the time. Counsel further asserts that the director's decision to deny the application because the doctor's letter was a copy "is ludicrous." Counsel asserts that the applicant submitted original affidavits and a lease to establish his required continuous residence.

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. See § 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 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 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 or 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). See 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)."

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden and establish by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true.

On June 11, 2002, the applicant submitted the current Form I-485, Application to Register Permanent Residence or Adjust Status. On July 25, 2003, the applicant appeared for an interview based on the application.

The documentation that the applicant submits in support of his claim that he entered the United States before January 1, 1982, and resided continuously thereafter until May 4, 1988, consists of two residential leases, affidavits from [REDACTED] and [REDACTED], and a letter from [REDACTED]

The leases dated December 1, 1981, and January 15, 1985, can be given minimal weight as evidence of the applicant's continuous residence in the United States during the required period because the information contained in them cannot be verified. They are not accompanied by

letters from the landlords or corresponding rent receipts, and do not contain contact information for the landlord or the management company.

The fill-in-the-blank affidavits from [REDACTED] and [REDACTED] can only be given minimal weight as evidence of the applicant continuous residence in the United States during the required period because they do not contain sufficient detail. Although [REDACTED] claims to have known that the applicant has been a continuous resident of the United States since 1983 and [REDACTED] since 1981, they both fail to indicate any personal knowledge of the applicant's claimed entry to the United States in 1981. They also fail to provide sufficient relevant details regarding the circumstances of the applicant's residence during the statutory period, including where the applicant has lived and worked. Lacking such relevant detail, the statements can be afforded only minimal weight as evidence of the applicant's continuous residence in the United States for the requisite period.

The letter dated November 20, 1984, from [REDACTED] can also only be given minimal weight because it also contains insufficient detail and is not amenable to verification. [REDACTED] states that the applicant was examined in his office on the date the letter was written and "found to suffer from Upper Respiratory tract infection with acute Bronchitis progressing to right interstitial Pneumonia." The letter states that the applicant is advised bed rest for 7 to 10 days and that his condition is to be reevaluated on November 30, 1984. The letter fails to indicate what records were consulted and does not indicate an address provided by the applicant in the doctor's records. Given this lack of detail and authentication, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period. Finally, a single doctor's visit, while possibly confirming the applicant's physical presence on the date of the examination is not probative of the applicant's continuous residence in the United States during the statutory period.

The director did not fail to give the letter weight because it was a copy as counsel asserts on appeal. Rather, the director noted that the letter was not original and declined to give it significant weight because of the irregularities contained in the letter, including spelling errors and discrepancies in font. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Counsel failed to address or reconcile these discrepancies and has failed to submit competent objective evidence pointing to where the truth lies.

For the reasons noted above, these documents can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The record of proceedings also contains other documents, including correspondence addressed to the applicant in 1990. These documents all indicate physical presence after May 4, 1988, and do

not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in 1981 and to have resided for the duration of the requisite period in New Jersey and New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance primarily on letters and affidavits, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.