



U.S. Citizenship
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FILE:

MSC 02 124 62435

Office: MOUNT LAUREL

Date: FEB 05 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.


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, Mount Laurel, New Jersey, 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. Specifically, the director found that the applicant had not established the veracity of the affiants' testimony submitted by the applicant in support of the application.

On appeal, counsel asserts that the affiants provided documentary evidence of identity and contact information, and that the director failed to attempt to verify any of the information. Counsel provides additional evidence for consideration.

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 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 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).

In the Notice of Intent to Deny (NOID), the director noted that the applicant stated that he entered the United States without inspection through Canada in October 1981 and that he left the United States on June 11, 1987 and returned on July 20, 1987 without inspection through Mexico. The director indicated that the applicant failed to submit any primary or secondary evidence of either of these two entries. The director noted the deficiencies of the three affidavits submitted in support of the application. In response, the applicant submitted two new affidavits. In the Notice of Decision, the director denied the application because of the deficiencies in the two new affidavits.

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 before January 1, 1982, through May 4, 1988. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of the five affidavits mentioned by the director; a copy of the applicant's passport issued in New York in 1989; photocopies of envelopes addressed to the applicant; and a consular certification of the applicant's birth in Pakistan. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains three nearly identical affidavits from [REDACTED] and [REDACTED], and two additional affidavits from [REDACTED] and [REDACTED]. Although most of the affiants state that they have known the applicant since before January 1, 1982, the statements do not supply enough details to lend credibility to a relationship with the applicant of more than 20 years. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's continuous residence in the United States. Further, the affiants do not provide information regarding where the applicant lived during the requisite period. The affidavit of [REDACTED] attests to the residence of the applicant in the United States since 1984. The affidavit of [REDACTED] states that he helped the applicant to find a job briefly at [REDACTED] soon after the applicant's arrival in 1981. The applicant does not list [REDACTED] as his employer or his residence in Georgia in 1981 on his Form I-687 application for adjustment to temporary residence. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

On appeal, counsel states that the affidavits contain identifying and contact information, and that the director erred by not attempting to verify the truth of the assertions. The fact that the director has the discretion to contact witnesses listed in support of an application does not require the director to accept evidence, such as the five affidavits in this case, which lacks the minimal detail to establish that their claims are probably true.

On appeal, counsel identifies the mosque where the applicant attended weekly prayer in New York during the requisite period as the [REDACTED]. The applicant does not submit a letter from the [REDACTED] attesting to the applicant's association with the organization in compliance with the regulation at 8 C.F.R. § 245a.2(d)(3)(v), which provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. The applicant does not declare his association with the [REDACTED] on either the Form I-687 or the current Form I-485 application to adjust status to permanent residence. Further, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). For these reasons, the applicant's stated association with the Makeey Mosque is not deemed probative and is of little evidentiary value.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. Although the applicant has submitted five affidavits in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States 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.