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U.S. Citizenship
and Immigration
Services

L2

[REDACTED]

FILE:

MSC 02 058 60611

Office: NEW YORK Date: FEB 24 2009

IN RE:

Applicant:

[REDACTED]

APPLICATION:

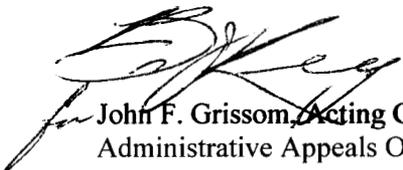
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

IN BEHALF OF APPLICANT:

[REDACTED]

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 (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the applicant's response to the Notice of Intent to Deny was not considered by the director. Counsel asserts that the applicant's supporting documents submitted are sufficient to warrant approval of the application. Counsel provides copies of documents that were previously submitted in support of the appeal.

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. Section 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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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.

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. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- An affidavit from [REDACTED] of Virginia, who attested to the applicant's New York residence since November 1981 and to his absence from the United States from August 1, 1987 to September 1, 1987. The affiant asserted that he had lived with the applicant and has maintained a good friendship with him. It is noted in a separate affidavit the affiant indicated that he has resided with the applicant since May 1991.
- Affidavits from [REDACTED] and [REDACTED] of New York, who attested to the applicant's residence in the United States since 1981.
- Affidavits from [REDACTED] and [REDACTED] of New York, who attested to the applicant's New York residence since November 1981 and December 1981, respectively. [REDACTED] asserted that the applicant is a family friend and attested to the applicant's moral character. [REDACTED] asserted that he had resided with the applicant for a long time.
- An affidavit from [REDACTED] who attested to the applicant's employment from 1985 to 1988 at a newsstand in New York, City.
- An affidavit from [REDACTED] of Westside Stationery in New York, who attested to the applicant's employment as a stock boy from 1981 to 1984. A letter dated December 5, 2003, from a representative of [REDACTED] in Corona, New York, who indicated that the applicant has been a member of its congregation since 1982.

On August 27, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that there were inconsistencies between his testimony, application and documentation. Specifically: 1) on his Form I-687 application, the applicant indicated that he was not affiliated or associated with any clubs, organizations, churches, mosques, etc., during the requisite period; however, the letter from [REDACTED] attested to his membership since 1982. The applicant was advised

that [redacted] of [redacted] indicated, "there are no records of any issuing an affidavit to [the applicant] on December 5, 2003, because people come into the Temple to pray." [redacted] also stated that the Temple was formed sometime in the 1990's;" 2) the affidavits from [redacted] and [redacted] did not include a telephone number and according to the New York Telephone Operator and Directory, the addresses listed for the affidavits did not relate to the affiants; and 3) according to the New York Telephone Operator and Director, the address listed on Westside Stationery letterhead does not relate to this company.

The director, in issuing her Notice of Intent to Deny, also drew extensively from the questions and answers provided at the time of the applicant's LIFE interview. However, neither the interviewing officer's notes nor a signed statement executed by the applicant corroborating the interviewing officer's questions, which would further impact adversely on the applicant's credibility, were incorporated into the record. Accordingly, the AAO finds that there is insufficient evidence in the record to support the director's findings that the applicant's oral testimony was inconsistent with other information in the record, and these findings are withdrawn.

Counsel, in response, asserted that he was submitting a letter from "Verizon telephone company addressed to Pen and Ink Co., previously known as West Side Stationery" indicating that the company does not have access to a system for information prior to May 30, 1997. Counsel asserted that it did not appear possible for a telephone operator to state that the letterhead and address does not relate to West Side Stationery. Counsel provided an additional affidavit from a representative of West Side Stationery doing business as Gold Leaf Stationery reaffirming the applicant's employment from December 1981 to July 1987. Counsel also submitted: 1) a letter dated September 20, 2007, from [redacted], who indicated that the applicant visited his law office for consultation in March 1982; 2) an envelope that appears to have been postmarked in 1982; and 3) an affidavit from [redacted] of New York, who indicated that the applicant worked for his company, Newsstand, as a helper from 1987 to 1990.

The director, in denying the application, noted that the documents submitted were insufficient to overcome the ground for denial.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to

January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The employment affidavits submitted failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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 affidavits from the remaining affiants failed to provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. 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.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests. As previously noted, the applicant did not list any affiliation with a religious organization during the requisite period at item 34 on his Form I-687 application.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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).

On his Form G-325A, Biographic Information, signed October 25, 2001, the applicant indicated that he resided in his native country, Pakistan from October 1964 to September 1987.

This fact tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States prior to September 1987. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

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