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U.S. Citizenship
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FILE:

MSC 02 323 60209

Office: NEW YORK

Date: FEB 26 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: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief asserting that the evidence submitted was not fully considered and requesting further review.

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 its amenability to verification. *See* 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 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 since 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on August 19, 2002. On December 8, 2007, the director denied the application. The applicant, through counsel, filed a timely appeal from that decision on December 31, 2007.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record reflects that the applicant, a native and citizen of India, claims to have initially entered the United States without inspection on November 20, 1981, and to have departed the United States on only one occasion – for a trip to Canada from July 25, 1987 to August 15, 1987 – in order to visit family in Canada.

The issue in this proceeding is whether the applicant has demonstrated that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. With regard to this time period, the record includes the following documentation:

Employment letter:

1. A letter dated November 16, 1989, from [REDACTED], stating that the applicant had been employed as a carpet installer from November 17, 1986, to May 12, 1988.

The employment letter provided does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to provide the applicant's address at the time of employment; identify the exact period of employment; 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.

Letters from organizations:

2. A letter dated July 14, 2004, from the [REDACTED] [REDACTED] in Astoria, New York, stating that the applicant had attended the center for the purpose of prayer since 1987. A second letter dated August 16, 2004, states that the applicant started coming to Friday congregational prayer on an unspecified date in 1988.
3. Letters dated July 28, 2004, and December 30, 2005, from [REDACTED] of the [REDACTED], in New York, New York, stating that he had known the applicant since 1984.

With regard to the above attestations, it is noted that they do not show the address(es) where the applicant resided throughout the membership period or establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records).

Affidavits from acquaintances:

4. A letter dated November 2, 1988 from [REDACTED] of Bronx, New York, stating that the applicant had been his roommate since December 1981.
5. Letters from [REDACTED] of Bronx, New York, stating that she had known the applicant since an unspecified date in 1985; [REDACTED] of Centereach, New York, stating that he had known the applicant since an unspecified date in 1982; and, [REDACTED] of Brooklyn, New York, stating that she had known the applicant since an unspecified date in 1986.

6. An undated letter from [REDACTED] of Ontario, Canada, stating that the applicant spent time with his family in Toronto from July 25, 1987, to August 15, 1987.

The affidavits provided lack details as to how the affiants first met the applicant, what their relationships with the applicant were, and how frequently and under what circumstances they saw the applicant during the requisite period. As such, the statements can only be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

Other documentation:

7. A letter dated March 21, 2006, from [REDACTED], of Brooklyn, New York, stating that the applicant had been attending his office since January 1988.

It is noted that the physician's letter merely attests to the applicant's presence in the United States since January 1988.

The only documentation provided by the applicant attesting to his presence in the United States prior to January 1, 1982, is the affidavit from [REDACTED] (No. 4, above).

Furthermore, there are inconsistencies noted in the record. At the time of signing a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act) on November 28, 1988, the applicant indicated that he had no affiliation with any clubs, organizations, churches, unions, businesses, etc., and that he had only worked for [REDACTED] in Bronx, New York since March 1982. This information does not coincide with the documentation contained in Nos. 1 through 3, above. Also, [REDACTED] (in No. 7, above) indicates the had applicant resided at [REDACTED] Astoria, New York, since 1986; however, on his Form I-687, the applicant indicated that he had lived at [REDACTED] Bronx, New York since December 1981.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved

is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

The paucity of the documentation submitted, as well as the inconsistencies noted in the record, to corroborate the applicant’s claim of continuous residence for the entire requisite period 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.

It is concluded that the applicant has failed to provide sufficient documentation to establish by a preponderance of the evidence that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.