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U.S. Citizenship
and Immigration
Services

L2

FILE:

Office: NEW YORK

Date:

JAN - 5 2009

[REDACTED]
[REDACTED] consolidated]
MSC 02 239 60651

IN RE:

Applicant: [REDACTED]

PETITION: 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:

SELF-REPRESENTED

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 determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982, through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant submits a brief statement as well as documentation previously provided.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The pertinent statutory provision reads as follows:

Section 1104(c)(2)(B)(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 that were most recently in effect before the date of the enactment of this Act shall apply.

“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. Although the term “emergent reason” is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.”

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 or Adjust Status, under the LIFE Act on May 27, 2002.

On August 25, 2007, the director issued a Notice of Intent to Deny (NOID) the application because the applicant had failed to submit sufficient documentation to establish his continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988. The director also noted that the applicant had stated in 1986 that he had been absent from the United States for more than 45 days during the requisite time period. The applicant was granted thirty days to respond to

the notice. The record reflects that the applicant failed to respond to the request. Therefore, on September 29, 2007, the director denied the application on the basis of the reasons stated in the NOID.

The applicant filed an appeal from the director's decision on October 29, 2007. On appeal, the applicant claims that he never stated that he had been out of the United States for "seven month [sic] straight" and that he used to "go and comeback between Canada and the U.S. [He] never stayed more than 2 to 3 weeks."

The issue in this proceeding is whether the applicant has established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.¹ In support of his claim, the applicant has submitted the following documentation throughout the application process:

Employment Letters

1. An undated, un-notarized letter from [REDACTED] Manager of Pellegrino's Restaurant in New York, New York, stating that the applicant had been employed since 1987.
2. An un-notarized letter, dated April 1990, from [REDACTED] Manager of Ristorante S.P.Q.R. in New York, New York, stating that the applicant had been employed as a busboy/waiter from November 1982 until March 1985, earning \$10.00 to \$15.00 plus tips for a six-hour shift.

Neither of these employment letters comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to provide the applicant's address at the time of employment; identify the exact periods of employment; show periods of layoff (if any); 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 Acquaintances

3. A notarized letter dated April 4, 1990, from [REDACTED] Pastor of St. Patrick's Old Cathedral in New York, New York, stating that he had known the applicant since 1983.

¹ 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).

4. A notarized letter dated March 27, 2002, from [REDACTED] of Staten Island, New York, stating that he had known the applicant for approximately 14 years (i.e. since 1988), since he met him at [REDACTED] Restaurant.

The letter from [REDACTED] is generally vague as to how he dates his acquaintance with the applicant, how often and under what circumstances they had contact during the requisite period, and provides few details that would lend credibility to his relationship with the applicant. As such, his statement carries little evidentiary weight. While the letter from [REDACTED] contains some detail regarding where and when he met the applicant, he only attests to having known the applicant since 1988.

Other Documentation

5. His Moroccan passport # [REDACTED] issued in Montreal, Canada, on May 30, 1985, valid until May 29, 1990. The passport contains two nonimmigrant visitor (B-2) visas issued to the applicant by the American Consulate in Quebec, Canada, on July 3, 1985, and July 9, 1986, and an entry stamp indicating that the applicant was admitted to the United States as a nonimmigrant visitor on March 7, 1987.

In summary, for the duration of the requisite time period, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no church attestations that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v)(A) through (G). The applicant also has not provided any documentation including, for example, money order receipts, passport entries (other than the 1987 entry discussed in No. 5 above), children's birth certificates, bank book transactions, letters of correspondence, a Social Security or Selective Service card, automobile license receipts, deeds, tax receipts, insurance policies or other similar documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists of third-party affidavits ("other relevant documentation"), none of which attest to the affiants' knowledge of the applicant's entry into the United States prior to January 1, 1982.

The record also reflects that on January 16, 1992, the applicant attempted to enter the United States at John F. Kennedy Airport in New York, with a U.S. Citizenship and Immigration Services (USCIS) employment authorization card and his Moroccan passport. Because the applicant was not in possession of the required Form I-512, Advance Parole Document, he was detained. In a signed statement, under oath, taken from him on a Form I-215W, Record of Sworn Statement in Affidavit Form, the applicant claimed he had initially entered the United States without inspection across the Canadian border in 1981. He also stated that he had been absent from the United States as follows: (1) for about eight months in 1986 to Canada in order to obtain a visa so that he could enter the

United States legally; (2) for about one month to Morocco in 1987; (3) for about one month to Morocco in 1990; and, (4) for five weeks to Morocco prior to his arrival in January 16, 1992.

Although the applicant clearly claims on appeal that he never admitted to having departed the United States for more than 2-3 weeks at a time, his statement provided under oath in 1992 clearly contradicts that claim. 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).

It is concluded that the applicant has failed 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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