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U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 02 211 61475

Office: NEW YORK

Date:

JAN 05 2009

IN RE: Applicant:

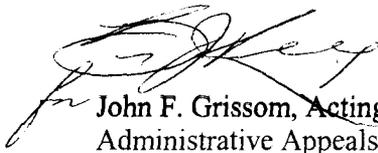
APPLICATION:

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, 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 failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient evidence to establish his continuous residence. Counsel submits additional evidence on appeal.

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).

“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.

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.

In the Notice of Intent to Deny (NOID), dated April 27, 2007, the director notified the applicant that he had failed to establish that he had resided continuously in an unlawful status during the requisite period. The director noted that the applicant had submitted affidavits that were not credible or amenable to verification. The director also indicated that the applicant had been arrested in connection with I-688A fraud in Operation Catchhold, and therefore, the applicant was inadmissible under INA 212(a)(6)(C)(i). The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated August 7, 2007, the director denied the application noting that counsel for the applicant responded to the NOID, but failed to overcome the reasons for denial stated in the NOID.

It is noted that, as pointed out by counsel in his response to the NOID, there is no indication in the record that the applicant was ever arrested in connection with I-688A fraud in Operation Catchhold. Accordingly, that portion of the director’s decision pertaining to the arrest of the applicant is hereby withdrawn.

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. The applicant submitted employment letters, affidavits, and mail envelopes as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is not relevant, probative, and credible.

The record reflects that the applicant has submitted questionable documentation. For example, on his Form I-687, signed on August 16, 1990, the applicant does not indicate that he is married or has children. However, on his Form G-325A, signed on April 23, 2002, the applicant indicates that he was married in Punjab, India, on November 05, 1986, and the marriage was terminated on April 11, 2000 in Queens, New York. On his Form I-485, and on a Petition for Alien Relative, Form I-130, filed on his behalf by his spouse (), whom he subsequently married on April 11, 2000, two sons are identified, both born in India, on January 30, 1988, and January 30, 1990, respectively. However, on his Form I-687, and an accompanying Form for Determination of Class Membership in *CSS v. Meese*, the applicant stated that he had departed the United States once, in August 1987 to visit his family and friends in Canada and he had returned in September 1987. However, as noted above, the record reflects that the applicant was married in India on November 1986, and he had a child born in India on January 30, 1988. These discrepancies cast considerable doubt on the applicant's claim that he has resided continuously in the United States since June 1981. The applicant has failed to reconcile the discrepancies in the record.

As determined by the director, the applicant failed to submit sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. As also noted above, the discrepancies in the applicant's claimed entry date and unlawful residence, and the record of evidence, cast considerable doubt on the applicant's claim that he resided in the United States since 1981 in an unlawful status. Accordingly, the evidence submitted by the applicant to establish his continuous residence, is deemed not credible.

Although the AAO has determined that the applicant was not arrested, the record reflects that the applicant has been identified as having procured an immigration-related benefit through the payment of a bribe to an immigration officer working undercover in a fraud investigation named "Operation Catchhold." The applicant has been implicated in immigration-related fraudulent activities, and it is unlikely that his "notarized" documents are valid. Also, the affidavits submitted are not probative given the evidence of record of falsified application(s). Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

In addition, the record indicates that the applicant was married in India on November 5, 1986. However, the applicant failed to disclose that absence. It is noted that on his Form I-687, the applicant indicated only one absence, to Canada, from August 1987 to September 1987. The record does not indicate any other absences.

This discrepancy casts considerable doubt on whether the applicant's claim that he has resided in the United States throughout the requisite period. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status 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.