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U.S. Citizenship
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FILE:



Office: NEW YORK

Date: JAN 30 2009

[consolidated herein]

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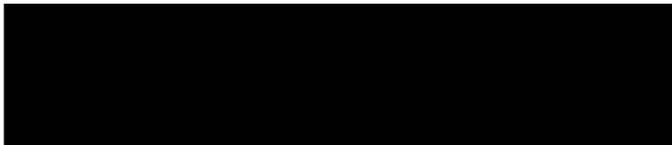
IN RE: Applicant:



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. 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 and resubmits documentation previously provided.

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 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 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.

The record reflects that the applicant filed a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act) on August 22, 1990. The applicant claimed to have entered the United States without inspection along the U.S./Mexican border in September 1981, and to have departed the United States on only one occasion – from December 1987 to February 1988, in order to attend his father's funeral in India.

On the Form I-687, the applicant also indicated that he had a spouse (██████████) and two children (██████████, a son, and ██████████, a daughter) – all born and living in India at the time, and that he had no affiliations with clubs, organizations, churches, unions, businesses, etc.

In support of the Form I-687, the applicant submitted: fill-in-the-blank affidavits from ██████████ and ██████████ listing that applicant's addresses in the United States since October 1981; a similar fill-in-the-blank affidavit from ██████████ listing the applicant's address in the United States from July 1986 to January 1989; a fill-in-the-blank affidavit from ██████████ stating that he had known the applicant since 1981 and that the applicant left the United States from December 1987 to February 1988; and, a letter from ██████████ of Car Wash Corner in Jamaica, New York, stating that the applicant had been employed from July 1986 to January 1989. None of the affiants provided their contact phone numbers and the affidavits 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. Furthermore, the employment letter provided is not notarized and 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; state the applicant's duties (other than "worker"); 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. As such the documentation provided in connection with the applicant's Form I-687 lacks probative value.

The applicant subsequently also submitted a letter from ██████████, dated February 26, 2002, stating that he had known the applicant since February 1983, and a letter from The Sikh Cultural Society, Inc., in Richmond Hill, New York, dated March 3, 2002, stating that the applicant "is a member of our congregation from [sic] a long time." The affidavit from ██████████ lacks details that would lend credibility to his claimed 19 year relationship with the applicant and provides no basis for concluding that he actually had direct and personal knowledge of the events and circumstances of the applicant residence in the United States. Furthermore, the letter from The Sikh Cultural Society, Inc., does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v), in that it does 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). Since the applicant did not list having had an affiliation with the organization on his Form I-687, it would appear that his membership must have begun after he submitted the form in 1990. As such, these documents also can only be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period.

The record also reflects that a Form I-130, Petition for Alien Relative, was filed on the applicant's behalf by ██████████, a native of the Dominican Republic and naturalized citizen of the United States, on September 20, 1996. The applicant simultaneously filed a Form I-485, Application to Register Permanent Resident or Adjust status, as the spouse of a United States

citizen. Documentation submitted in connection with those applications, indicated that the couple were married in New York on August 30, 1996; the applicant's first spouse, [REDACTED] had died in India on March 15, 1996; and that the applicant had three children who were born and residing in India ([REDACTED] born on October 7, 1983; N [REDACTED] born on May 2, 1985; and a daughter born on April 28, 1989). The Form I-130 was denied on May 14, 2001, and the Form I-485 was denied on July 11, 2001, because it was determined that the death certificate of the applicant's prior spouse [REDACTED] was fraudulent.

The applicant filed the current Form I-485 under the LIFE Act on July 2, 2001. On this application, the applicant indicated that he also had a fourth child born and residing in India [REDACTED] a daughter, born on June 2, 1990). The applicant provided no new documentation in support of the Form I-485 regarding his entry into the United States prior to January 1, 1982, and his continuous residence in the United States from that date through May 4, 1988.

In a Notice of Intent to Deny (NOID) the application, dated July 24, 2007, the director noted insufficiencies in the documentation provided by the applicant to date. The director also concluded that the applicant had been absent from the United States on four occasions (in addition to his claimed trip from December 1987 through February 1988) in order to conceive his four children. The director granted the applicant 30 days in which to submit additional documentation in response to the NOID.

The director initially denied the application in a Notice of Decision (NOD) dated September 20, 2007, finding that the applicant had failed to respond to the NOID. However, the record reflects that counsel did, in fact, respond in or about August 2007. Therefore, the director reopened the proceedings.

In response to the NOID, counsel had submitted additional affidavits from [REDACTED] [REDACTED], and [REDACTED] stating that they each had personal knowledge of the applicant's residence in the United States from 1981 through 1988, and an affidavit from [REDACTED] stating he and the applicant "were in the same plane sitting side by side" on a flight to India in December 1987. With regard to the births of the applicant's children in India in 1983, 1985, 1989, and 1990, counsel asserted that the applicant's "wife visited him occasionally in New York, at which time she was able to conceive." No evidence of the wife's visits to the United States was submitted in support of this assertion.

On November 9, 2007, the director issued an amended NOD questioning the credibility of the affidavits and again noting the births of the applicant's children in India. The director specifically noted that at an interview on March 5, 2002, the applicant testified that his wife had never been in Mexico, Canada, or the United States.

The applicant, through counsel, filed a timely appeal from the director's decision on November 28, 2007.

On appeal, counsel asserts that the affidavits provided in response to the NOID provide personal knowledge of the applicant's continuous physical presence in the United States from late 1981 until May 1988; the director made no attempt to verify the testimony of the affiants; the weight of the evidence confirms that the applicant made a brief departure to India in December 1987 to attend his father's funeral; and, the denial decision blatantly ignores the weight of the evidence submitted, and the adverse credibility finding is merely speculative and conjectural. Again, with regard to the birth of the applicant's children in India, counsel merely states that the applicant's "wife visited him several time in New York, at which time they conceived several children during the statutory period." Counsel did not address the issue of the applicant's prior testimony, noted in the amended NOD, in which he stated that his wife had never been in Mexico, Canada, or the United States.

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).

In summary, 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 attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, Selective Service card, automobile, contract, and insurance documentation, deeds or mortgage contracts, tax receipts, or insurance policies) 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 solely of third-party affidavits ("other relevant documentation").

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).

Due to the paucity of credible documentation submitted, inconsistencies in the record, and discrepancies in information provided that have not been adequately documented, 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.

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