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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

S. Citizenship
and Immigration
Services

L2

FILE:

MSC 02 242 60999

Office: NEW YORK, NY

Date: JUL 01 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. If your appeal was dismissed or rejected, all documents have been forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and 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. The decision 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 submit sufficient evidence to establish that he had resided continuously in the United States throughout the statutory period as required under section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserted through counsel that the record did include sufficient evidence to establish that he had resided continuously in the United States in an unlawful status throughout the statutory period.

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 AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

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 through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) and 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

- (1) 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.

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

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

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 application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

Documentary evidence may be in the format prescribed by U.S. Citizenship and Immigration Services (USCIS) regulations. *See id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. In evaluating the evidence, *Matter of E-M-* also states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. 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 petitioner or 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

On or near January 13, 1992, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On May 30, 2002, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The director issued a notice of intent to deny (NOID) in which she indicated that she intended to deny the application because the applicant had not established that he resided continuously in the United States during the statutory period.

In the NOID, the director pointed out that the undated statement of [REDACTED] indicates that the applicant began residing in the United States during March 1980, that he exited in 1987 and that when he reentered in 1987, he returned through the U.S. border with Canada. However, at the LIFE legalization interview the applicant testified that in 1987 he reentered the United States from Mexico at California. Also, at this interview, the applicant testified that he was absent from the United States in 1987 for two months, or more than 45 days in a single absence. In addition, he testified that he moved from New York to Virginia in 1985 or 1986. He submitted the Alpine Construction Co. Inc. employment letter, which is neither dated nor signed, to support this claim. This letter indicates that he worked for this company in Washington, D.C. from January 1986 through August 1991. In addition, the applicant provided the statement of [REDACTED], which is neither dated nor signed, which indicates that the applicant began residing with [REDACTED] in Fairfax, Virginia during January 1986. However, the applicant stated on the Form I-687 filed on January 13, 1992 that he lived in New York from April 1980 through August 1991. Based on these discrepancies in the evidence, the director found that the applicant had failed to establish continuous residence in the United States throughout the statutory period.

In response to the NOID, the applicant submitted through previous counsel a brief and two additional statements. The first of these two statements indicates that [REDACTED] of Alexandria, Virginia and the applicant have been friends since 1985. The second statement/affidavit indicates that the applicant attended the wedding of [REDACTED] in the United States during March 1982. Neither statement gives any indication as to whether Mr. [REDACTED] or [REDACTED] has any personal knowledge of whether the applicant resided continuously in the United States throughout the statutory period or for a portion of the statutory period. In her brief submitted in response to the NOID, previous counsel stated that the applicant did not recall submitting the statement of [REDACTED], and that the applicant reentered the United States at the border with Mexico in 1987. Counsel also suggested that the applicant's statement on the Form I-687 filed on March 20, 1992 that he was absent from the United States July/August 1987 was sufficient to demonstrate that the applicant was absent from the United States for only 30 days in 1987, not 2 months as he testified at the LIFE legalization interview.

In the notice of decision, the director indicated that the two new affidavits and explanations submitted with the rebuttal to the notice of intent to deny did not adequately address and were not

sufficient to overcome the inconsistencies in the record such as the applicant's testimony that he was outside the United States for two months during 1987 and the inconsistent claims of whether the applicant lived in New York or metro-Washington, D.C. during the latter part of the statutory period. Therefore, the director denied the application for the reasons set forth in the NOID.

On appeal, the applicant through counsel submitted a brief, but did not provide additional evidence.

In his brief, counsel indicated that the director should have contacted the two individuals who wrote the statements submitted in response to the notice of intent to deny to verify the accuracy of the statements. Counsel did not identify any legal authority for this assertion. Moreover, the AAO finds that the director correctly concluded that even if the two statements are accurate, they fail to overcome the discrepancies in the record.

Counsel indicated as well that USCIS should not draw any negative inference related to the credibility of an affidavit based on the fact that an affiant may no longer be reached at the contact telephone number which he or she provided for the record more than ten years previously. The AAO concurs.

Counsel also suggested that the AAO should not consider the statement of [REDACTED] and his assertion that the applicant entered the United States in 1987 at the Canadian border, rather than the Mexican border as the applicant testified, because the applicant could not recall submitting statement into the record. This suggestion is not persuasive.

Counsel asserted that the applicant was not outside the United States for over 45 days in one single absence during the statutory period, but counsel did not submit any evidence to overcome the applicant's testimony that he was outside the United States for two months in 1987.

Counsel referred to the Form I-687 which the applicant filed on March 20, 1992 and indicated that the director erred in stating that the applicant asserted on this form that he resided in New York throughout the statutory period. Counsel stated that the applicant left blank the section of this form on which he was to list his addresses during the statutory period. In fact, the director was referring to the Form I-687 filed on January 13, 1992 when she correctly stated that on this form, the applicant listed New York addresses for himself throughout the entire statutory period.

At issue in this proceeding is whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988. Here, the applicant has not met that burden.

The applicant has failed to provide evidence sufficient to overcome discrepancies in the record such as his LIFE legalization interview testimony which indicates that he broke his continuous residence by being absent from the United States for over 45 days in 1987. He has not provided evidence to overcome the inconsistencies between the Form I-687 filed on January 13, 1992

which indicates that he lived in New York throughout the statutory period and, for example, the Alpine Construction Co., Inc. employment letter which indicates that the applicant worked in Washington, D.C. from January 1986 through August 1991.

The AAO also notes, going beyond the decision of the director, that the applicant stated at item 33 of the Form I-687 filed on January 13, 1992 that he began residing continuously in the United States during April 1980 and at item 35 that he first exited the United States in June 1987. The applicant stated on the Form for Determination of Class Membership in *CSS v. Meese*, which he signed on January 12, 1992, that he first entered the United States during March 1980. The statement of [REDACTED] also indicates that the applicant began residing in the United States during March 1980. Yet, the record also indicates that the applicant's wife gave birth to the applicant's son in Pakistan during 1982 and that his wife has never been to the United States. In the applicant's statement dated April 11, 2006, submitted in response to the notice of intent to deny the Form I-687 filed on July 20, 2005 under a separate legalization class-action lawsuit, the applicant responded to questions regarding apparent discrepancies in the record surrounding his son's birth by claiming that he did not leave Pakistan to begin residing in the United States until July 1981 and that his son was born in Pakistan during February 1982. However, the applicant did not provide any contemporaneous evidence to overcome the many inconsistencies in the record related to these claims.

These various discrepancies cast doubt on the authenticity of all the evidence of record, including the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States throughout the statutory period. There is no contemporaneous, independent evidence in the record which places the applicant in the United States during the statutory period.

The various statements and affidavits currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and they are not probative.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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