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U.S. Citizenship
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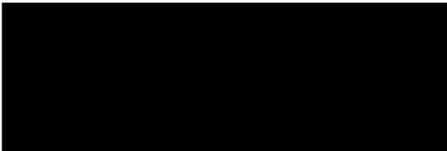
Applicant:



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).

IN 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 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. Grison, 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 had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the director has failed to consider the totality of the evidence and testimony given by the applicant. Counsel states that the applicant has submitted relevant, probative, and credible evidence and affidavits to support his claim.

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

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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 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. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- An affidavit from [REDACTED] of Yonkers, New York, who indicated that he met the applicant in New York in 1984.
- An affidavit from [REDACTED] of Flushing, New York, who indicated that he met the applicant in New York in 1981 and attested to the applicant's moral character.
- Affidavits from [REDACTED] and [REDACTED] of Selma, California, who attested to the applicant's Selma, California residence at [REDACTED] from October 3, 1981 to October 1, 1988.

On January 14, 2008, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record, and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits.

Counsel, in response, asserted that the director failed to take into account the difficulty for an applicant to obtain primary or verifiable evidence establishing initial entry and continuous residence. Counsel asserted that the applicant has submitted affidavits properly prepared and executed in support of his continuous residence during the requisite period. Counsel submitted an additional affidavit from [REDACTED] along with a copy of the affiant's permanent resident card and United States passport. The affiant reaffirmed the veracity of his initial affidavit to having known the applicant since 1984 and stated "I came to know from many of our friend that [the applicant] is residing in New York (U.S.A)." Counsel also submitted a copy of a United States passport belonging to [REDACTED] who previously submitted an affidavit on behalf of the applicant.

The director, in denying the application, noted that according to U.S. Citizenship and Immigration Services (USCIS) records, [REDACTED] did not enter the United States until November 29, 1984 and [REDACTED] did not enter the United States until December 27, 1989.

On appeal, counsel asserts that [REDACTED] and [REDACTED] obtained permanent resident status on November 29, 1984 and December 27, 1989, respectively. Counsel provides a copy of [REDACTED] passport reflecting an issuance date of November 26, 1984 by the Consulate General of India in New York and a copy of [REDACTED] naturalization certificate. Counsel argues that the director failed to accord proper weight to the affidavit of [REDACTED]. Counsel asserts that the director has failed to consider the two doctors' letters submitted in support of the applicant's residence during the requisite period. Counsel asserts that

the affidavits are not amenable to verification because of the lengthy periods of time that have elapsed since the initial statutory application period.

USCIS has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

_____ and _____ attested to the applicant's residence in New York since 1981 and 1984, respectively. However, in their affidavits, _____ and _____ attested to the applicant's residence in Selma, California during the requisite period. Furthermore, the applicant did not claim on his Form I-687 application residence in New York during the requisite period.

The applicant claimed on his Form I-687 application that he was self-employed during the requisite period. However, the applicant provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i).

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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).

Counsel asserts that the director has failed to consider the two doctors' letters submitted in support of the applicant's residence during the requisite period. However, a thorough review of the record failed to find any supporting letters from doctors.

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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

Accompanying his Form I-485 application, the applicant submitted a Form G-325A, Biographic Information. On this form, the applicant indicated that he resided in his native country, India, from August 1959 to July 2001.

This fact further raises serious questions regarding the authenticity of the supporting documents submitted with the LIFE application and tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. The Form G-325A undermines the credibility of the applicant's claim to have continuously resided in the United States during the period in question and, therefore, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982, through May 4, 1988, as required.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

Finally, it is noted for the record that on May 28, 1993, the applicant was arrested by the New York Police Department for menacing in the third degree, a violation of PL 120.15. In response to a request for the final court disposition, the applicant submitted court documentation from the District Attorney's Office, indicating the office declined to prosecute the charge against the applicant.

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