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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEW YORK

Date:

MAY 08 2009

MSC 02 250 66448

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).

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. 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 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 applicant's answers were consistent and specific and he provided sufficient information establishing his credibility for the filed application.

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 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 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:

- Affidavits from [REDACTED] and [REDACTED], who indicated that they met the applicant at the Jamaica Muslim Center Inc. Queens, New York in October 1981 and in 1984, respectively. [REDACTED] indicated that he sees the applicant three times a week and work out together at the Muslim center. [REDACTED] indicated that he and the applicant have participated in many social activities since that time.
- An affidavit from [REDACTED] who attested to the applicant's residence at [REDACTED] Long Island City, New York from January 1985 to October 1988. The affiant asserted that he was the lessee of the property.
- An affidavit from [REDACTED] who indicated that from October 1981 to December 1984, he and the applicant shared an apartment at [REDACTED] New York.
- An affidavit from [REDACTED] who attested to the applicant's residences in Elmhurst and Long Island City during the requisite period.
- A letter dated May 30, 1991, from the manager of Crafts and Fashions in Bogota, New Jersey, who indicated that the applicant applied for a job in December 1984, but was denied the job as he did not have a social security number or immigration papers.
- An affidavit from [REDACTED] of K&M General Constructor in Bronx, New York, who attested to the applicant's employment as a painter from November 1981 to 1986.
- Letters dated May 26, 1991 and April 15, 2002, from [REDACTED] and [REDACTED], respectively of Jamaica Muslim Center, Inc, in Queens, New York, who indicated that the applicant has been a musalee (worshiper) of the mosque since 1981.
- An affidavit from [REDACTED] who indicated that he met the applicant in 1982 at the office of K&M General Contractor and has remained in contact with the applicant since that time. The affiant indicated that the applicant also worked for his company, Kabir & Haque Contracting Co. Inc. during 1985 and 1986 as an on-call daily laborer.
- Two metered envelopes postmarked November 27, 1981, and August 13, 1987.
- Two receipts dated April 4, 1982, and June 8, 1983.

- An affidavit from [REDACTED], who indicated that he has been acquainted with the applicant since 1981. The affiant indicated that he assisted the applicant in finding an apartment to reside and “some cash paying jobs with which he could support himself.”
- An affidavit from [REDACTED], who indicated in 1984, the applicant was referred to him for a job by [REDACTED];” however, he had no position open at the time and assisted the applicant in finding a daily labor job. The affiant indicated that the applicant would assist him in his restaurant from time to time.

On August 7, 2007, 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. The applicant was also advised that: 1) the telephone number listed on the affidavit from K&M General Contractor belonged to a non-working number for Continental Airlines; and 2) the receipts were fraudulent as they listed a telephone number with the area code of “718, that did not come into existence until September 1, 1984.

Counsel requested an extension of 60 days in which to submit a response. The director, in denying the application, determined that counsel’s request was unwarranted and denied the request.

On appeal, counsel asserts, in pertinent part:

The applicant responded to each question in great details and specificity. His answers were consistent, specific and provided sufficient information establishing his credibility. During the interview, the applicant testified that he never thought that he would be needing such old documents, going back to 1981, in support of any upcoming immigration program, otherwise he would have saved such documents. The applicant, however, filed numerous duly notarized affidavits, invoices, educational record, income tax returns and various other supporting documents.

In regards to the 718 area code, counsel asserts that the director did not present any evidence to support his claim that the area code did not exist until 1984. Counsel contends that the receipts are genuine and the information contained in the receipts is correct including the phone numbers and area codes.

The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in the United States since before January 1, 1982, through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

A review of the Internet site, <http://areacode-info.com>, confirms that the 718 area code was created for use in three of New York City’s five counties, Kings (also known as Brooklyn), Queens, and Staten Island, beginning on September 2, 1984. Prior to such date all five counties of New York

City utilized the 212 area code with two counties, Manhattan and the Bronx, permanently retaining the 212 area code after December 31, 1984.

The issue regarding the telephone number listed on the letterhead for K&M General Contractor has not been addressed.

The letters from the Jamaica Muslim Center, Inc., have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiants do not explain the origin of the information to which they attest. Furthermore, the applicant did not list any affiliation or association with a religious organization during the requisite period at item 34 on his Form I-687 application dated May 31, 1991.

The authenticity of the postmarked metered envelope can neither be confirmed nor denied.

The employment affidavits failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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. Further, the applicant did not claim on his Form I-687 application to have been employed by [REDACTED] of Kabir & Haque Contracting Co. Inc.

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).

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 (5<sup>th</sup> ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). 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.

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