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



U.S. Citizenship  
and Immigration  
Services

L2

FILE:

MSC 02 001 62383

Office: NEW YORK

Date:

**NOV 02 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 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.

  
Perry Rhew  
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, 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 resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director also determined that the applicant was inadmissible to the United States under the provisions of Section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the ACT).

On appeal, counsel asserts that the applicant provided consistent information regarding his residential addresses and employment history during the requisite period, as well as affidavits. Counsel submits copies of previously submitted affidavits. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

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 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 § 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 and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence

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<sup>1</sup> 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 (9<sup>th</sup> 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).

produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

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.* 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 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 (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).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of attestations from individuals claiming to know the applicant, letters of employment, a lease agreement and an airline ticket. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The affidavit from [REDACTED] reflects that he knows the applicant; however, the affiant fails to include any dates or the circumstances of the applicant’s residence in the United States. The affidavit fails to provide minimal probative value as evidence in support of his claim of continuous residence during the requisite period.

The virtually identical affidavits from [REDACTED] and [REDACTED] contain statements that they have known the applicant since 1981. The affidavit from [REDACTED] indicates that he has knowledge of the applicant's residence in the United States since 1985. The affidavit from [REDACTED] reflects that he has known the applicant since 1982.

These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The affidavits are general in nature. The affidavits fail to provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The declaration from [REDACTED] of the Muslim Centre of New York, indicates that the applicant attended the Mosque from 1983 to 1988 on a continuous basis. The declaration does not conform to regulatory standards for letters from organizations as stated at 8 C.F.R. § 245a.2(d)(3)(v). The declaration fails to state the address where the applicant resided during membership period and establish the origin of the information being attested to. Lacking relevant details, the declaration provides minimal probative value as evidence in support of the applicant's claim.

The record contains three employment letters that indicate the applicant was employed for all, or a portion of, the requisite period. The statements fail to conform to the regulatory standards for employment letters as stated at 8 C.F.R. § 245a.2(d)(3)(i). The employment letters fail to provide the applicant's address at the time of employment, declare whether the information was taken from company records, or 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. Given the lack of relevant details, the employment letters provide minimal probative value as evidence in support of the applicant's claim.

The record contains a copy of a lease agreement in the applicant's name in New York from December 1981 to December 1984. The copy is somewhat suspect because the top portion of inserted typed text is missing.

Based on the foregoing, the documentation submitted in support of the applicant's claim has been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. 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 from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

It is also noted that in the Notice of Decision, the director determined that the applicant had submitted a fraudulent airline ticket to substantiate his claimed absence from the United States. The date of issue on the ticket is July 1, 1987. The director noted that "Rev. 3-89" is printed on the back of the ticket. The director questioned the authenticity of the ticket stating that it was printed or revised in March 1989. Neither the applicant nor counsel addressed this discrepancy on appeal.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under BIA precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I & N Dec. 436, 447 (BIA 1961).

The applicant knowingly submitted fraudulent evidence, which was directly relevant to his eligibility, in order to procure an immigration benefit. The AAO finds this to be a material misrepresentation. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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