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FILE:

MSC 01 338 60925

Office: NEW YORK, NY

Date:

NOV 16 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.

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found that the evidence in the record failed to demonstrate that it is more likely than not that the applicant resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

On appeal, the applicant asserted through counsel that the evidence does demonstrate that he resided continuously in the United States throughout the statutory period, and that he is otherwise qualified to adjust to lawful permanent resident status under the LIFE Act.

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

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).

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.

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.

On or near November 4, 1991, 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 September 3, 2001, he filed Form I-485, Application to Register Permanent Residence or Adjust Status, under section 1104 of the LIFE Act.

In the notice of intent to deny (NOID), the director indicated that the applicant's affidavits and statements in the record were not probative in that, for example, they failed to include some form of identification for the affiant, they failed to include documentary evidence that the affiant resided in the United States during the relevant period, they failed to demonstrate that the affiant had personal knowledge of the applicant's residency in the United States during the relevant period and they were not sufficiently amenable to verification. The director also indicated that she contacted the telephone number listed in the letterhead of the American Claims Adjustment, Inc. employment letter in the record which indicates that the applicant worked for this company from 1981 through 1987. The person at that telephone number indicated that [REDACTED] the individual who signed the American Claims Adjustment employment letter, was not at that telephone number, and that the company as well as the address listed in the letterhead, [REDACTED], was not associated with that telephone number.² The director also stated that USCIS records indicate that the applicant's affiants: [REDACTED], and [REDACTED] each having affidavits dated November 22, 1991, did not enter the United States until after the statutory period. Therefore, these three are not qualified to attest to the applicant's residence in the United States during the relevant period.

In response, the applicant did not address the inconsistencies and lack of sufficient detail and sufficient information and documentation in the evidence put forth by the director in the NOID, other than to submit the copies of identification documents for one of his affiants. Instead, the applicant indicated through counsel that the director may not request documentary evidence in LIFE legalization cases. He asserted that the affidavits and statements in the record are amenable to verification, that they are specific and that they do include personal knowledge of the applicant's U.S. residency during the relevant period. The applicant also submitted the affidavits of: [REDACTED] dated February 18, 2008 and [REDACTED] dated February 16, 2008. He re-submitted the affidavit of [REDACTED] dated November 22, 1991, together with a copy of [REDACTED] USA passport identity page and a copy of his overseas Pakistani identity card.

² A search of New York State corporations at the New York State, Department of State, Department of Corporations website: http://appsex8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry indicates that there is no record of any business named American Claims Adjustment, Inc. ever operating in New York, (accessed November 9, 2009.) Further, according to information available at www.mapquest.com, www.googlemaps.com and www.google.com, there is no building with the address [REDACTED] as this address falls directly in the intersection of [REDACTED] and [REDACTED] (accessed November 9, 2009.)

In the notice of decision, the director denied the matter for the reasons set forth in the NOID. The director also indicated that he contacted directory assistance to obtain the telephone number of the applicant's affiant [REDACTED] and that she telephoned [REDACTED]. In that conversation, [REDACTED] indicated that he met the applicant after becoming a U.S. citizen. Yet, [REDACTED] attested on his affidavit that he became a citizen in April 1982 and that he has personal knowledge of the applicant residing in the United States from June 1981 through the present. The director stated that this inconsistency undermined the credibility of this evidence. The director also pointed out that the applicant had not provided the telephone number of the affiant [REDACTED] nor had he provided proof that [REDACTED] resided in the United States during the relevant period.

On appeal, the applicant did not address the discrepancies in the evidence set forth by the director. He did not provide copies of identification cards for his affiants, he did not provide evidence that his affiants resided in the United States during the relevant period, he did not provide any additional contact information for his affiants and he did not otherwise address the requests for additional information made by the director. He did not state why he was unable to address the director's requests and to address the discrepancies listed by the director. Instead, the applicant indicated through counsel that the director may not request documentary evidence in LIFE legalization cases. He suggested that this contradicted LIFE statutory requirements. He asserted that the affidavits and statements in the record are amenable to verification, that they are detailed and that they do include personal knowledge of the applicant's U.S. residency during the relevant period. He indicated that the director failed to contact the applicant's affiants despite having been given their current telephone numbers. As stated above, this is incorrect. The applicant's affiant, [REDACTED], for example, did not provide a telephone number, despite the director's request in the NOID that affiants should include such information. Nonetheless, the director located this affiant's telephone number using directory assistance. The director then telephoned [REDACTED] who indicated that he met the applicant after April 1982; yet he attested to having knowledge of his residence in the United States during June 1981. The applicant also incorrectly indicated through counsel that the director had failed to support his claim that the applicant's evidence included inconsistencies and lacked detail, and as such was not credible.

The AAO finds that the director may request additional information and documentation where, as here, the affidavits and statements are the only evidence which the applicant has submitted related to his claim of continuous residence and these statements contain inconsistencies, they are not detailed and they do not indicate, for example, how each affiant has personal knowledge of the applicant's residency in the United States during the relevant period, how to contact affiants for verification of the statements submitted, etc.

The applicant did not address the director's finding that USCIS records indicate that the applicant's affiants, whose affidavits he submitted in 1991 and who attested to his residency in the United States during the relevant period, did not enter the United States until after the statutory period. He did not address the finding that the credibility of the American Claims Adjustment, Inc. employment letter in the record was undermined in that when the director contacted the telephone number on that letter, she was told that the individual who signed the letter was not at that number. Further, after the director indicated in the NOID that affidavits should include supporting documentation such as a

copy of the affiant's identification card and proof that the affiant lived in the United States during the relevant period, the applicant submitted two more affidavits that did not include this documentation.

The applicant failed to provide an explanation as to why he was unable to address the discrepancies set forth by the director and why he was unable to provide the supporting documentation for his affidavits, as requested by the director.

The AAO finds that the lack of detail regarding how the affiants have personal knowledge of the applicant's residency in the United States during the relevant period and how each of his affiants and former employers might be properly contacted, as pointed out by the director, cast serious doubt on all the evidence in the 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. The applicant's inability to provide such additional information and his inability to explain why he is unable to provide such information casts further doubt on his claims made in this proceeding and on all the evidence of record.

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).

This office finds that the various statements and affidavits in the record which were submitted to substantiate the applicant's claim of continuous residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the deficiencies in the record relating to the applicant's claim that he maintained continuous residence in the United States from a date prior to January 1, 1982 and throughout the statutory period, and that these documents are not probative in this matter.

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 to adjust to permanent resident status under section 1104 of the LIFE Act. The appeal is dismissed on this basis.

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