



U.S. Citizenship
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Services

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FILE:



Office: MIAMI

Date:

NOV 23 2009

MSC 02 130 61957

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, Miami. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the applicant's evidence should be deemed as credible and sufficient to verify the authenticity of the information. The applicant requested a copy of the record of proceedings under the Freedom of Information Act (FOIA). The record reflects that the FOIA request was processed on April 2, 2009 (NRC2007068190).

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (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.

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 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).

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 petitioner 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, deny the application or petition.

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 applicant’s class membership determination form and the United States Citizenship and Immigration Services (USCIS) adjudicating officer’s notes reveal that the applicant claimed to have first entered the United States with a nonimmigrant B-2 visitor’s visa in February, 1981. The applicant does not submit a copy of any passport, Form I-94 Departure Record or other testamentary or documentary evidence showing that he entered the United States on a nonimmigrant visa with inspection prior to January 1, 1982.

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant submitted affidavits from [REDACTED] and [REDACTED] to establish his initial entry and residence in the United States during the requisite period. The affidavits all contain statements that the affiants have either personally known the applicant or know that the applicant resided in the United States since the 1980’s. The affiants generally attest to being the applicant’s friend, his addresses in the United States, communicating and socializing with the applicant and his good moral character but provide no other information about the applicant.

Upon review, the affidavits do not contain sufficiently detailed descriptions to establish the reliability of their assertions. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed affidavits to corroborate the applicant’s claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. For instance, none of the affiants supplies any details about the applicant’s life, such as, knowledge about his family members, education, hobbies, shared activities with the applicant, and the manner he entered the United States.

The affiants do not 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 were 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. Given the applicant's reliance upon documents with minimal probative value, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the requisite period. Therefore, the affidavits have little probative value.

The letter signed by [REDACTED] priest at the [REDACTED], states that he has known the applicant since January, 1987, and that he was an active member of their [REDACTED] [REDACTED] from January, 1987 to September, 1989. The letter also states that the applicant participated regularly in the activities at the temple and was always ready to volunteer his time towards the services at the temple. The letter is not probative of his residence in the United States prior to January, 1987. The evidence will be given some weight of the applicant's presence in the United States after January, 1987.

The applicant's remaining evidence consists of a letter from [REDACTED] that states a dental record exists in his office for the applicant since November 20, 1983. The letter does not address the frequency of the applicant's visits to the dentist and is not accompanied by any medical evidence. The evidence will be given nominal weight.

On appeal, counsel states that if the USCIS found the affidavits to be insufficient or not credible, it should have attempted to verify the authenticity of the information. The applicant, however, bears the burden of proving by a preponderance of the evidence that he resided continuously in the United States throughout the requisite period. USCIS is not required to contact affiants to supplement their testimony.

The applicant's Form I-485 and initial Form I-687 application indicate that the applicant's son, [REDACTED] [REDACTED], was born in India on February 25, 1987, and his daughter, [REDACTED] [REDACTED], was born in India on May 20, 1988. The record does not explain how the children were conceived in India if the applicant did not travel on or about May, 1986, and August, 1987. He does not indicate he was absent from the United States at either of these times. There is no evidence of record that his wife traveled to the United States approximately nine months prior to the birth of these children. There is no evidence of record to explain this inconsistency. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245A of the Act. 8 C.F.R. § 245a.2(d)(5). Given the lack of detail in the affidavits and the inconsistency noted, the applicant failed to establish his continuous unlawful residence in the United States for the duration of the requisite period. The applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.