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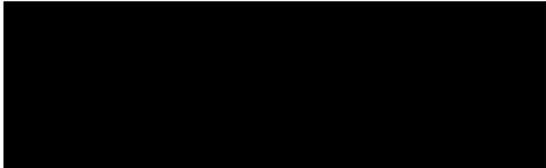
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: NEW YORK Date: FEB 26 2010
MSC 02 214 62095

IN RE: Applicant: [REDACTED]

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.

Elizabeth McCormack

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. 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. The director also determined that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

On appeal, counsel states that the applicant submitted the evidence as required by the Act, regulations and settlement stipulation and demonstrated eligibility for the benefit sought. 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 June 4, 2009. (NRC2008018486).

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 during the Form I-687 interview the applicant claimed to have first entered the United States at Miami, Florida, on April 19, 1981 without inspection. The copy of the applicant’s nonimmigrant visa page contained in the record shows that the applicant was later issued a nonimmigrant F-1, student visa from the American Consulate, Dhaka, Bangladesh, on March 7, 1988. A copy of the Form I-94, Departure Record, in the applicant’s record shows that he was admitted into the United States on March 25, 1988 as a F-1 student at New York, New York.

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, letters from his previous employers, letters from affiliated organizations 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 two statements, one from [REDACTED] and another from [REDACTED]. The record also contains an affidavit from [REDACTED] to establish the applicant’s initial entry and residence in the United States during the requisite period. [REDACTED] states that the applicant is a close relative that resided with him at his residence from April, 1981 to June, 1985. [REDACTED] states that the applicant is a family friend that resided with him from 1986 to December, 1987. [REDACTED] states that he has known the applicant since 1986. He notes that the applicant went to Bangladesh in 1984; this absence is not listed on the Form I-687. The witnesses generally attest to the applicant’s good moral character but provide no other information about the applicant.

Upon review, the statements and affidavit do not contain sufficiently detailed descriptions to establish the reliability of their assertions. 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 and shared activities with the applicant.

The witnesses 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 statements and affidavit have little probative value.

The record contains letters from the applicant's previous employers. [REDACTED] stated that the applicant worked with the company as a dish washer from May 8, 1981 until July 31, 1983. [REDACTED] stated that the applicant was employed as a waiter from November 16, 1987 to February 10, 1988. Neither of these restaurants is listed as an employer at part 36 of the applicant's Form I-687. The employers provide no other information about the applicant or any evidence to verify the applicant's employment. 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. As the letters do not meet most of the requirements stipulated in the aforementioned regulation, they will be given nominal weight.

The letter signed by [REDACTED] states that the applicant has been a regular member of the mosque from January 15, 1986 until December 5, 1987. The secretary attests that the applicant participated in mosque activities, voluntary work and contributed to the mosque funds. In another letter, [REDACTED] of New York states that the applicant has been a member from May 15, 1981 to April 8, 1985. The secretary attests to the applicant occasionally attending prayer services, paying donations, being active in mosque activities and being of good moral character. The letter signed by [REDACTED] of the mosque committee of the Islamic Center of New Jersey, Jersey (spelled Jercey on letterhead) City, New Jersey states that the applicant has been a member of the mosque since July 17, 1981. The letter provides the applicant's member number and states that the mosque has records of the donations made by the applicant. The authors provide no other information concerning the applicant's entry and do not address the dates of the applicant's residence in the United States. None of these organizations is listed at part 34 of the applicant's Form I-687 application. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6)

establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letters do not contain most of the aforementioned requirements and will be given nominal weight.

The remaining evidence consists of copies of letters from: New York Telephone regarding a new telephone connection in the applicant's name; the United States Air Force regarding the applicant's desire to join; Popular Electronics regarding the applicant's interest in its institution; Western Union regarding the applicant's enrollment in their preferred customer program and a Pan Am one way ticket issued to the applicant. The applicant also submitted a letter signed by [REDACTED] regarding the applicant being his patient since April 6, 1986, a copy of a test result from [REDACTED] Remittance Form from Habib Bank Limited which is illegible and receipts from various merchants.

The letters and aforementioned evidence are dated in the 1980s and were addressed in the director's Notice of Intent to Deny (NOID) the applicant's Form I-485 LIFE application. The director's NOID states that the letters from the New York Telephone, the United States Air Force, Popular Electronics, the Islamic Center of New Jersey City, the Islamic Center of New York, the Muslim Center of New York, El Inca Restaurant, [REDACTED] Western Union, Lincoln Medical Laboratory, [REDACTED], and receipts from Trade Horn and Franklin Pharmacy provided with the Form I-485 application were not credible. In counsel's rebuttal dated July 26, 2007, he attempted to provide an explanation for the discrepancies found in the aforementioned evidence provided by the applicant. However, absent documentary evidence to substantiate his assertions, the explanation will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec, 190 (Reg. Comm. 1972)). Accordingly, the evidence does not establish the applicant's entry prior to January 1, 1982 and his continuous residence throughout the requisite period.

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). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence and the inconsistencies noted call 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.