



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-L-

DATE: FEB. 29, 2016

APPEAL OF HOUSTON FIELD OFFICE DECISION

APPLICATION: FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE
OR ADJUST STATUS

The Applicant, a native and citizen of Pakistan, seeks to adjust status to lawful permanent resident. *See* Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. No. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. No. 106-554, 114 Stat. 2763 (2000). The Director, Houston Field Office, denied the application. The matter is before us on appeal. The appeal will be dismissed.

In a decision dated July 30, 2004, the Director denied the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, because the Applicant did not demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The Director also noted that the Applicant's documentation was not credible, could not be verified, and did not establish that the Applicant was in unlawful status prior to January 1, 1982. Earlier, in a notice of intent to deny (NOID) dated April 12, 2004, the Director had asked the Applicant to submit evidence establishing that he had entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988; and to list all absences from the United States. The Director noted that the letters and affidavits the Applicant had provided could not be verified. The Director also noted that the Applicant did not submit primary evidence of his claimed entry and of the requisite unlawful residence. In response to the NOID, the Applicant stated that he entered the United States with a valid nonimmigrant visa in December 1981; that he started working without authorization before 1982; that he has established that he lost the passport he used to enter the United States; and that affidavits from witnesses attesting to his residence in the United States establish his continuous unlawful residence.

On appeal, the Applicant states that the Director abused his discretion in denying the application, because the Applicant was in unlawful status when he violated the terms of his nonimmigrant visa by working without authorization. He also asserts that the Director improperly disregarded his affidavit concerning his entry before January 1, 1982, and concerning his continuous residence in the United States.

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 [Act] 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 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). Concerning 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. 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.

(b)(6)

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We have reviewed the evidence *de novo* to assess its credibility, relevance, and probative value.

The Applicant must establish that he entered the United States before January 1, 1982, and has continuously resided in the United States in an unlawful status for the duration of the relevant period.

On appeal, the Applicant submits no new evidence concerning the requirement that he establish his entry as a nonimmigrant before January 1, 1982. The record includes among his affidavits, one dated November 9, 2005, stating that he arrived on December 4 or 5, 1981, "with B2 status." It also includes a document titled "Observation," dated July 14, 1990, from a [REDACTED] at the [REDACTED] [REDACTED] stating that "the evidence produced" establishes that the Applicant traveled in December 1981 and the passport was reported lost to the consulate. The document does not provide details about the evidence produced or about the travel. Moreover, the Applicant does not explain what evidence he presented to the consulate, how the consulate determined his exact date of travel, or when he reported his passport was lost. The record also includes a photocopied document that appears to be a slip of paper titled [REDACTED] Police Department," dated September 8, 1991, and the words "lost or stolen (passport)" and an address matching the Applicant's 1990 address as listed on Form I-687, without further details. These documents do not corroborate the Applicant's claim that he lawfully entered the United States in December 1981 as a nonimmigrant or that the passport he used in 1981 was lost.

While the Applicant states that in December 1981 he changed his address several times without notifying the government, his Form I-687 does not reflect address changes at any time in 1981. Even had his unlawful status before January 1, 1982, been known to the government, however, as discussed below, the Applicant has not provided credible evidence to establish that he continuously resided in an unlawful status in the United States since prior to January 1, 1982.

Among the documentation the Applicant provided to establish his continuous residence in an unlawful status is affidavits from [REDACTED], [REDACTED], and [REDACTED]. The affiants attest to knowing the Applicant to have resided in the United States since 1982, 1983, and 1986, respectively. The record of proceedings, however, reflects that when contacted for verification, each of these affiants disavowed the contents of the affidavits and requested that their affidavits be stricken from the record. [REDACTED] confirmed that he did not know the Applicant until after 1991; [REDACTED] confirmed that she did not know the Applicant until around 1995, when the Applicant worked at the [REDACTED] and, [REDACTED] confirmed that he did not know the Applicant until after 1990, when the Applicant delivered pizza and worked at the [REDACTED] Store. Though on appeal the Applicant asserts that these affiants retracted their statements because they feared repercussions from U.S. immigration officials, he provides no documentary evidence to corroborate his assertions.

The remaining affidavits and letters provided describe only generally how they date their acquaintance with the Applicant in the United States, where and under what circumstances they first met the Applicant, and how they maintained contact with him since their initial acquaintance with him in the United States. The declarants do not give details of their acquaintance and activities with the Applicant.

The declarants do not provide concrete information, specific to the Applicant and generated by the asserted association with him, which would reflect and corroborate the extent of this association and demonstrate that the affiants had a sufficient basis for reliable knowledge about the Applicant during the time addressed in their 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. Therefore, the declarations have little probative value.

Moreover, 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 Applicant's letters of employment do not provide his address at the time of employment; identify the exact period of employment; show periods of layoff; state his duties; 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. Furthermore, the letters of employment are not corroborated by reliable evidence, such as W-2 wage and tax statements, earnings statements during the period of employment, and income tax returns. In addition, the Applicant's Social Security statement reports no income for the Applicant before 1990. The Applicant's evidence related to his employment during the requisite period is, therefore, of minimal probative value.

These discrepancies and lack of detail cast considerable doubt on whether the evidence the Applicant provided in support of his application is genuine and whether he has resided in the United States in an unlawful status since prior to January 1, 1982, as he claims. Doubt cast on any aspect of an 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The Applicant has not submitted objective evidence to explain the discrepancies in his testimony and in the record. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. Given the minimal probative value of the Applicant's evidence, we conclude that he has not established continuous residence in unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

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In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-L-*, ID# 14266 (AAO Feb. 29, 2016)