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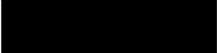
U.S. Citizenship  
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Services

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FILE:



Office: ATLANTA

Date:

NOV 07 2007

MSC 02 010 61348

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the district director applied an incorrect standard of evidence to evaluate the instant case and that, under the preponderance of the evidence standard, the applicant has substantiated his claim of continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988.

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 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.* 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 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish 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 May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record reflects the following evidence:

- 1) An undated statement from the applicant that he was self-employed and earned his livelihood by selling various items on the sidewalk in some busy areas. He worked as a street vendor from 1984 until January 1986 when he got a new job. The applicant continued his new job until January 1987, and then he worked as a street vendor from February 1987 to October 1989.
- 2) An April 2, 2005, affidavit by [REDACTED] who stated that she has known the applicant since he arrived in the United States in 1982. The affiant stated that she is the applicant's niece and the applicant visited her home many times and worked at the Ghandi Restaurant with her father.
- 3) A July 25, 2002, sworn statement by [REDACTED], who stated that the applicant worked as a waiter from February 1986 to November 1988 in his father's restaurant, Gandhi Restaurant. The affiant stated that the applicant worked until January 1987.
- 4) A September 27, 1990, notarized letter by [REDACTED] president/sec of Gandhi Restaurant Inc., who stated that the applicant was employed as a waiter from February 1986 to January 1987.
- 5) An April 25, 1989, notarized letter by [REDACTED] president of the Islamic Council of America Inc., who certified that he had known the applicant since July 1981 in the mosque.
- 6) November 5, 1990, notarized letter by [REDACTED], who stated that the applicant had been his roommate at his rented apartment at [REDACTED] from October 1985 to December 1987; and then at [REDACTED] from January 1988 to April 1990. [REDACTED] further stated that the apartment lease, telephone, gas and utility registration, etc. were in his name. The applicant only paid his part of the bills.

- 7) A June 10, 1991, affidavit by [REDACTED] who stated that the applicant had been his tenant from February 1981 to September 1985 at [REDACTED]. The monthly rent was \$75.00.
- 8) An April 2, 2005, sworn affidavit by [REDACTED] who stated that she has known the applicant since birth as they are cousins. [REDACTED] stated that she came to the United States before the applicant, and that the applicant came to the United States in February 1981. [REDACTED] confirmed that the applicant worked at Ghandi Restaurant.
- 9) A January 24, 2005, affidavit by [REDACTED] who stated that he has known the applicant since 1982 to 1994. [REDACTED] stated that they played soccer at Astoria Park in New York every Sunday during the summertime, and that they meet each other every weekend.

In a March 4, 2005, Notice of Decision, the district director denied the applicant's Form I-485 application due to insufficient and lack credible evidence. The director based the decision on five main issues and, on appeal, counsel responded in seriatim.

First, the applicant submitted a January 24, 2005, notarized statement by [REDACTED] who certified that he had known the applicant from 1982 to 1994. [REDACTED] stated that they had played soccer at Astoria Park every Sunday during the summer. The director noted that this affiant lacked credibility. When contacted by telephone, the affiant was inconsistent and could not recall the exact years that he played soccer with the applicant as he had done in his affidavit. Counsel contends that the affiant's statement should not be completely rejected, but rather weighed appropriately in light of corroborating statements from the applicant and other affiants. Counsel asserts that [REDACTED] is still a credible witness even if he "estimated" the dates of the applicant's presence in the United States. Counsel further asserts that, taken in its totality, the statements by [REDACTED], the applicant and other affiants establish by a preponderance of the evidence that the applicant was present in the United States before January 1, 1982.

[REDACTED] statements should not be completely rejected; however, his inability to confirm the exact dates of the applicant's presence in the United States certainly deters from his credibility. The fact that the affiant stated that "he may have guessed" the specific dates in his affidavit brings into question his knowledge of the applicant's presence in the United States during the requisite period.

Second, the director stated that the applicant's statement as to his entry into the United States before January 1, 1982, and absence in 1984 lacked credibility because he failed to provide documentary evidence or any details in his affidavit about the entries. Counsel contends that the director applied inappropriate adjudication in assaulting the applicant's credibility as there were no internal inconsistencies with the applicant's statement. Counsel concedes that the applicant probably entered without inspection and cannot produce any evidence of the manner of entry into the United States, but counsel asserts that this should not deter from the applicant's credibility.

Although there is no inconsistency by the applicant with regard to his entry into the United States in February 1981 and absence in 1984, there is an inconsistency in the statement of [REDACTED] [REDACTED] stated that she is the applicant's niece and that the applicant visited her home many times and worked at the Ghandi Restaurant with her father. She stated that the applicant arrived in 1982. [REDACTED]'s statement contradicts that statement of two other affiants, [REDACTED] and [REDACTED], who stated that the applicant resided in the United States in February 1981. This inconsistency by a close family relative brings into question the applicant's exact date of entry. The director articulated a material doubt and, in the absence of documentary evidence, it is appropriate for the director to believe that the claim is probably not true and find that the applicant lacks credibility.

Third, the director noted that the applicant failed to include an absence in 1987 from the United States in his affidavit or application for adjustment. Counsel stated that this item does not require a response as it does not contradict any evidence nor is it an appropriate ground to deny the instant application. Upon completion of his Form I-485 application, the applicant signed his name certifying, under penalty of perjury under the laws of the United States of America, that the application and the evidence submitted with it is all true and correct. The applicant's failure to correctly identify his date of last arrival on his Form I-485 application damages the applicant's credibility.

Fourth, the director stated that the applicant must reside continuously in the United States in an unlawful status during the requisite period. The director further stated that the applicant noted on his application that he entered the United States on a B-2 visitor visa on June 30, 1984, which was valid until September 1984. In the absence of any documentary evidence, it has not been established that the applicant entered the United States on a B-2 visitor visa.

Finally, the director noted that the statements by affiants, [REDACTED] and [REDACTED], proved to be unverifiable. Counsel contends that the applicant should have been notified and given an opportunity to locate the affiants. Counsel provided no citation to support his position.

Based on the above, the AAO agrees with the director's conclusion that, in its totality, the applicant failed to submit evidence that was either credible or amendable to verification. Therefore, the applicant has failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982, through May 4, 1988, 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.