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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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LA

JAN 27 2005

FILE: [REDACTED] Office: Houston Date:

IN RE: Applicant: [REDACTED]

PETITION: 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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The district director denied the application because the applicant had not demonstrated 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 in rendering its decision, the district office failed to take into consideration the evidence establishing the applicant's continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel also provides a separate statement in support of the appeal, in which he contends that the applicant's inability to produce additional evidence of residence for the period in question was the result of the passage of time.

An applicant for permanent resident status 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 and through May 4, 1988. 8 C.F.R. § 245a.11(b).

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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

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).

In the notice of intent to deny, the district director referenced an apparent contradiction regarding the circumstances of the applicant's claimed entry into the U.S. At the time of his adjustment interview, the applicant initially informed the interviewing officer that he first entered the U.S. alone and without inspection in October 1981 at El Paso, Texas. Upon further questioning, the applicant purportedly indicated he was accompanied by an "agent" from Pakistan, who thereupon appropriated the applicant's passport. According to the applicant, as he had no U.S. visa and was no longer in possession of his passport, he proceeded to enter the U.S. without inspection, having been driven across the border by the "agent" with whom he had traveled.

While this issue is not addressed by counsel or the applicant on appeal, the contradiction set forth in the intent notice does not seem to be as apparent upon examining the transcript of the interviewer's notes. Rather, it appears that the information regarding the applicant being accompanied by an agent was simply elicited from the applicant at a later stage of the interview process and that, in stating initially that he entered the U.S. alone, the applicant may simply have meant to convey that there were no *other* aliens accompanying him once he crossed the border into the U.S. Moreover, the totality of the applicant's documentation is otherwise

congruent in indicating his having entered the U.S. illegally in October or November 1981 -- in either case, prior to January 1, 1982. Accordingly, the questions raised in the notice of intent regarding alleged inconsistencies in the applicant's interview testimony do not, by themselves, appear sufficient to negate the applicant's claim to continuous residence in the U.S. during the period under consideration.

A further inconsistency set forth in the notice of intent concerns the applicant's claim at the time of his adjustment interview to have departed the U.S. for Pakistan on May 2, 1987 on a one-way passport. According to the interviewing examiner's notes, the applicant stated that he returned to the U.S. illegally as he was unable to obtain a visa. The reason provided by the applicant for his failure to obtain a visa was that he had no business in Pakistan. The notice of intent also mentions a further discrepancy relating to the applicant's May 1987 departure from the U.S. The district director observed that the applicant's LIFE application indicated his son was born March 13, 1988 in Pakistan. Yet, the applicant stated at his interview that his wife did not visit the U.S. until 2002. According to the district director, the applicant's claim that his son was conceived during his May 1987 visit to Pakistan is not consistent with his having been born March 13, 1988 -- approximately ten months subsequent to the applicant's claimed visit.

In support of his claim regarding his May 1987 departure to Pakistan, the applicant has provided a letter from the manager of Orient Travel, attesting to the applicant having purchased an airline ticket for the purpose of traveling to Pakistan on May 2, 1987. This claim is also supported by the applicant's Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), in which he specified that he traveled from the U.S. to Pakistan from May 2, 1987 to May 25, 1987 in order to visit family. However, as the applicant's submissions do not include any passport or visa material from this period, his explanation regarding his failure to obtain a visa can be neither confirmed nor denied based on the record of proceedings. It must also be noted that the applicant's son having been born ten months after purportedly being conceived during the applicant's approximately three-week trip in May 1987 is not beyond the realm of possibility.

As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant has provided evidence including seven affidavits of residence, three employer affidavits, a travel agency communication regarding his 1987 purchase of a ticket to Pakistan, a letter from the Consulate General of Pakistan affirming the applicant's having been issued a passport in 1981, and four photocopied Air Mail envelopes addressed to the applicant. The affidavits from employers as well as acquaintances, many of whom indicate their willingness to come forward and testify in this matter if necessary, may be accorded substantial evidentiary weight. These third-party statements, along with the contemporaneous evidence provided by the applicant in the form of photocopies of postmarked envelopes, are sufficient to meet his burden of proof of residence in the United States for the requisite period. Counsel's explanation on appeal that the applicant's inability to produce additional evidence of residence for the period in question was the result of the passage of time is considered to be a reasonable explanation in these circumstances..

The evidence provided by the applicant establishes, by a preponderance of the evidence, that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.