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U.S. Citizenship
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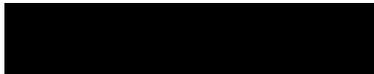
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FILE: 

Office: Houston

Date: JUL 07 2005

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. The file has 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 dismissed.

The district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. This decision was based on the district director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence, as well as the aggregate limit of one hundred and eighty (180) days for total absences, from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish his claim of unlawful residence in the requisite period.

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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

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. 8 C.F.R. § 245a.12(e). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is *probably* true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989). Preponderance of the evidence has also been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979).

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).

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).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on March 22, 1990. At part #32 of the Form I-687 application where applicants were asked to provide information regarding their immediate family, the applicant listed only two children, a son, [REDACTED] born in 1979, and a son, [REDACTED] born in 1981. The applicant indicated that both of his children were born in Pakistan. [REDACTED] the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant listed only one absence from this country for an unspecified period from June 1987 to July 1987 when he traveled to Pakistan for the death

of his father. The applicant failed to submit any evidence to support his claim of continuous residence in the United States since prior to January 1, 1982.

Subsequently, on May 30, 2002, the applicant filed his Form I-485 LIFE Act application. At part #3B of the Form I-485 LIFE Act application, where applicants were asked to list information relating to their spouse and children, the applicant listed the same two sons, [REDACTED] and [REDACTED] that had been listed on the Form I-687 application. However, the applicant also listed two additional sons, [REDACTED] born in Pakistan on October 17, 1982 and [REDACTED] born in Pakistan on November 9, 1983, on the Form I-485 LIFE Act application. No explanation was provided by the applicant as to why his sons, [REDACTED] and [REDACTED] were not listed on the Form I-687 application submitted on March 22, 1990, well after both of these children's respective births. The applicant failed again to submit any documentation in support of his claim of continuous residence in the United States from prior to January 1, 1982 to May 4, 1988.

The record shows that the applicant initially appeared for the requisite interview relating to his LIFE Act application at the Houston District Office on March 21, 2003. The notes of the officer who conducted this initial interview reveal that the applicant testified under oath that "...he left the United States in 1985 due to his wife taking ill. Because of her sickness, he remained out of the country until his return in 1989." The notes of the interviewing officer reflect that during the course of this initial interview, the applicant twice admitted that he had been absent from this country for approximately four years from 1985 to 1989. The record further shows that the applicant appeared again for a second interview on May 6, 2003. During the course of this second interview, the applicant testified under oath that his wife never came to the United States because she could not get a visa from the American Embassy.

The applicant's admission that he had been absent from this country from 1985 to 1989 brings into question the credibility of his claim of residence in this country since prior to January 1, 1982 to May 4, 1988. The fact that the applicant acknowledged that his wife has never been to the United States tends to establish that his sons, [REDACTED] born in Pakistan on October 17, 1982 and [REDACTED] born in Pakistan on November 9, 1983, were conceived by he and his wife in Pakistan approximately nine months before the birth of each respective son. In order to conceive these two children with his wife in Pakistan in early 1982 and early 1983, the applicant could not have been physically present in the United States and had to have been absent from the country on these occasions. This conclusion is made even more evident in light of fact that the applicant omitted his two sons, [REDACTED] and [REDACTED] when listing his children at part #32 of the Form I-687 application. That the applicant has failed to disclose the number and duration of his absences from this country in the requisite period further diminishes the credibility of his claim of residence in the United States from prior to January 1, 1982 to May 4, 1988.

On appeal, neither counsel nor the applicant makes any statement addressing the fact that the applicant has admitted he had been absent from the United States during the period from 1985 to 1989. In addition, neither party has provided any information to ascertain the number of absences the applicant had from this country during this period, the length of each single absence, and the aggregate total of all absences between January 1, 1982, and May 4, 1988.

The applicant has submitted no evidence to establish residence in the United States from the time he claimed to have commenced residing in the United States in 1981 to May 4, 1988. In light of the fact that the applicant claims to have continuously resided in this country since at least 1981, this inability to produce any

independent documentation to support his claim of residence raises serious questions regarding the credibility of the claim. The credibility of the applicant's claim of residence is further diminished by his admission that he was absent from the United States from 1985 to 1989.

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. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The applicant has specifically admitted that he exceeded the 45 day limit for a single absence from this country when he left the United States in 1985 because his wife was ill, he did not return to this country until 1989. Neither the counsel nor the applicant has asserted that an emergent reason delayed his return to the United States. The applicant has failed to establish having resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, 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.