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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC 02 072 61549

Office: San Francisco

Date: **NOV 22 2006**

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, San Francisco, California, 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 she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B)(i) of the LIFE Act, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended* by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000). The district director further determined that the applicant had been absent from the United States in excess of the 45-day limit for a single absence as well as the 180-day limit for the aggregate of all absences from this country during the requisite period as put forth at 8 C.F.R. § 245a.15(c)(1). The district director also determined that the applicant was inadmissible under section 212(a)(6)(C)(ii)(I) of the Immigration and Nationality Act (Act) because she had made a false claim to United States citizenship on a Small Business Administration (SBA) document. The district director concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act and denied the application.

On appeal, counsel asserts that the applicant did continuously reside in the United States for the period in question and disputes the determination that she was absent from this country. Counsel contests the finding that the applicant is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act because she made a false claim to United States citizenship on a SBA document. Counsel also indicates that a brief will be forthcoming within thirty days of the receipt of the appeal. However, as of the date of this decision, neither counsel nor the applicant has submitted any material to supplement the appeal. Therefore, the record must be considered complete.

Section 212(a)(6)(C)(ii)(I) of the Act states in pertinent part:

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

The first issue to be examined in this proceeding whether the applicant is inadmissible under section 212(a)(6)(C)(ii)(I) of the Act as a result of having made a false claim to United States citizenship on a SBA document. Here the evidence is speculative and inconclusive in nature.

The record shows that the applicant filed her Form I-485 LIFE Act application with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) on December 12, 2001. The applicant subsequently appeared for an interview regarding her Form I-485 Life Act application at the CIS District Office in San Francisco, California on January 15, 2004. The record contains a copy of an SBA 912, Statement of Personal History, that is signed by the applicant and dated January 27, 2000. At that portion of the SBA 912 statement where the individual executing the document was asked to indicate whether he or she was a United States citizen, the applicant checked the box marked "yes."

While the SBA 912 statement is usually included with business loan applications submitted to the SBA, the record contains no evidence to establish that the applicant and her spouse actually submitted the document to the SBA. Further, the record contains no evidence to demonstrate that any effort was undertaken to verify whether the applicant and her spouse had in fact submitted the SBA 912 in connection with a business loan application filed with the SBA. Without direct evidence establishing that the SBA 912 contained in the record was actually submitted to the SBA, it cannot be concluded that the applicant has made a false claim to United States citizenship within the meaning of section 212(a)(6)(C)(ii)(I) of the Act. As such, the district director's finding that the applicant was inadmissible under section 212(a)(6)(C)(ii)(I) of the Act must be considered as speculative and cannot be considered correct. Consequently, the issue of the applicant's admissibility is an insufficient basis to deny the application.

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. See § 1104(c)(2)(B) of the LIFE Act and 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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. See 8 C.F.R. § 245a.12(e).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 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 (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.

The next issue to be examined 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 applicant made a claim to class membership 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 Act on May 10, 1990. At part #32 of the Form I-687 application where applicant's were asked to provide information regarding their immediate family, the applicant indicated that her daughter, Faheen, was born in Karachi, Pakistan on August 13, 1985, In addition, at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed her addresses of residence as [REDACTED] from November 1981 to November 1983, [REDACTED] California from November 1983 to June 1984, [REDACTED] in [REDACTED] from June 1984 to March 1985, and [REDACTED] from July 1989 to May 10, 1990, the date the Form I-687 application was submitted. The applicant failed to list any address of residence in this country for that period from April 1985 to June 1989. Further, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant listed a trip to Pakistan for "child birth" from March 1985 to May 1989.

In support of her claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted her own affidavit in which she testified that she had lived in this country from 1981 through May 10, 1989, the date the document was executed. However, the probative value of the applicant's testimony is limited in that she has a direct interest in the outcome of these proceedings and she failed to include any independent evidence to corroborate her claim of residence in this country for the requisite period. The credibility of the applicant's claim of residence in the United States for the period in question is further diminished by the testimony she herself provided at parts #32, #33, and #35 of the Form I-687 application.

The record shows that the applicant appeared at the Service's District Office in San Francisco, California on April 29, 1992, in an attempt to renew her Form I-688A, Employment Authorization Card. The record further shows that the applicant provided two separate signed hand-written statements on this date, in which she admitted that she departed the United States to travel to Pakistan in March 1985.

In the first statement, the applicant explained that the purpose of her trip to Pakistan in March 1985 was to give birth to her daughter. The applicant declared that her daughter was born utilizing a caesarian section and that she experienced complications after the surgery. The applicant stated that problems with infection caused her to remain in the hospital for some six to seven months after the birth of her daughter. The applicant indicated that she subsequently underwent surgery again one year after the birth of her daughter because she had not healed correctly. The applicant noted that she

remained in the hospital for one month after her last surgery and was subsequently confined to her bed for another two to three months because she could not move. The applicant acknowledged that she could not travel during this period.

In the second statement provided on April 29, 1992, the applicant claimed that she initially flew from Pakistan to Mexico and first entered the United States without inspection when she crossed the border from Mexico with her husband on an unspecified date in 1981. The applicant declared that she lived in California until March of 1985 and then returned to Pakistan. The applicant stated that she subsequently lived in Pakistan until May of 1989 when she returned to the United States with a visa.

The fact that the applicant admitted that she resided in Pakistan from March 1985 to May 1989 directly contradicted her claim to have continuously resided in the United States from prior to January 1, 1982 to May 4, 1988.

The record shows that the applicant filed her Form I-485 LIFE Act application with the Service on December 12, 2001. At part #3B of the Form I-485 LIFE Act application, where applicants were asked to list immediate family members, the applicant listed a daughter, "Fahreen," born in Pakistan on August 13, 1985. It must be noted that the applicant again failed to include any independent evidence to corroborate her claim of residence in this country for the requisite period.

The applicant subsequently appeared for an interview regarding her Form I-485 Life Act application at CIS's District Office in San Francisco, California on January 15, 2004. The record shows that the applicant passed all tests relating to her ability to speak, understand, read, and write English on this date. The applicant also provided a computer printout from the Internal Revenue Service (IRS) reflecting in pertinent part that the applicant and her spouse filed federal tax returns for 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, and 1989. The computer printout shows that the federal returns for each of these years have an interest computation date of May 12, 2003, the date such returns were initially filed with the IRS. While the applicant and her spouse may very well have filed federal tax returns for each and every year from 1981 to 1989, the IRS computer printout demonstrates that such returns were not filed contemporaneously in each respective year but instead were all filed on May 12, 2003. Consequently, the IRS computer printout cannot be considered as evidence that corroborates the applicant's claim of residence in the United States from prior to January 1, 1982 to May 4, 1988.

The district director subsequently issued a notice to the applicant on December 13, 2004, informing her of CIS's intent to deny her Form I-485 LIFE Act application. The district director noted that the applicant had failed to submit any independent evidence to corroborate her claim of continuous residence in this country from prior to January 1, 1982 to May 4, 1988. The district director also pointed out that the applicant had provided testimony on her Form I-687 application and in her two signed hand-written statements executed on April 29, 1992, that directly contradicted her claim of continuous residence in the United States for the requisite period. The applicant was granted thirty days to respond to the notice.

In response, counsel submitted a statement in which he indicated that he did not represent the applicant on April 29, 1992, when she attempted to renew her Form I-688A at Service's District Office in 1992. While counsel requested a transcript of the applicant's testimony on this date, the record does not contain any transcript of her verbal testimony on April 29, 1992. Rather, the record contains the two signed hand-written statements that the applicant herself executed on August 29, 1992 in which she clearly admitted that she departed the United States for Pakistan in March of 1985 and remained in Pakistan until she returned to this country with a visa in May 1989. If counsel desired copies of the applicant's two signed hand-written statements or any other document contained in the record, he could have directly requested a copy of the record of proceedings from CIS or submitted a Freedom of Information Act request for a copy of the record on the applicant's behalf. To date, counsel has failed to avail himself of either method of obtaining a copy of the record.

The district director determined that the applicant had failed to demonstrate that she continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B)(i) of the LIFE Act, and therefore, denied the Form I-485 LIFE Act application on February 9, 2005.

On appeal, counsel asserts that the applicant did continuously reside in the United States for the period in question. However, neither counsel nor the applicant submits any evidence on appeal that would tend to corroborate her claim of residence in this country. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record contains no documentation to support the applicant's claim of residence other than her own affidavit. In addition, the applicant provided testimony on the Form I-687 application and in her two signed hand-written statements executed on April 29, 1992 that directly contradicted her claim of continuous residence in the United States from prior to January 1, 1982 to May 4, 1988. 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 complete lack of supporting documentation seriously undermines the credibility of the applicant's claim of residence in this country for the period in question. The applicant herself has negated the credibility of her claim of continuous residence in this country since prior to January 1, 1982 by providing a two signed statements written in her own hand in which she admitted that she did not reside in the United States from March 1985 to May 1989. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the

documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's admission that she did not reside in this country from March 1985 to May 1989, it is concluded that she has failed to establish continuous residence in an 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 on this basis.

"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.

The next issue to be examined in this proceeding is whether the applicant had been absent from the United States in excess of the 45-day limit for a single absence as well as the 180-day limit for the aggregate of all absences from this country during the requisite period as put forth at 8 C.F.R. § 245a.15(c)(1). Here, the applicant herself has admitted that she had been absent from the United States for over four years while she was living in Pakistan from March 1985 to May 1989.

As noted above, the applicant listed a trip to Pakistan for "child birth" from March 1985 to May 1989 at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry. The applicant subsequently reiterated that she had been absent from this country in this period in the two hand-written statements that she executed and signed on April 29, 1992. The applicant specifically acknowledged that she was absent from the United States for over four years from March 1985 to May 1989.

The applicant's admitted absence from this country of more than four years exceeds the 45-day limit for a single absence from the United States during the requisite period, as set forth in 8 C.F.R. § 245a.15(c)(1). Although the applicant's sole absence from this country of over four years also exceeded the 180-day limit for the aggregate of all absences from the United States during the requisite period, the 180-day limit put forth in 8 C.F.R. § 245a.15(c)(1) applies to cases in which an applicant had multiple absences from this country in that period from January 1, 1982 to May 4, 1988. As the applicant's absence of more than four years from this country was a single absence that exceeded the 45-day limit for such an absence from the United States, there is no need to examine whether the applicant's absence also exceeded the 180-day limit for the aggregate of all absences contained in 8 C.F.R. § 245a.15(c)(1).

Nevertheless, there must be a further determination as to whether the applicant's prolonged absence from the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that emergent means "coming unexpectedly into being."

The applicant has consistently testified that she departed the United States in March 1985 to give birth to her daughter. Both the applicant's testimony and the evidence contained in the record demonstrate that the applicant's daughter was subsequently born approximately five months later on August 13, 1985 in Karachi, Pakistan. Clearly, the applicant had knowledge that she was pregnant and the expected due date for the birth of her daughter when she left this country to return to Pakistan in March of 1985. The fact that the applicant departed the United States in March 1985 and traveled to Pakistan for the purpose of giving birth to her daughter demonstrates that she intended to remain in Pakistan at least through the date she gave birth to her child. That five-month period between the applicant's date of departure from this country in March 1985 and the birth of her daughter on August 13, 1985 exceeds the 45-day limit for a single absence from the United States. While the applicant developed complications after the birth of her daughter that may have delayed her subsequent return to the United States, these complications developed after she had already been absent from this country for five months. Consequently, it cannot be concluded that applicant's absence from this country in this period was due to an "emergent reason" within the meaning of *Matter of C, id.*

On appeal, counsel disputes the determination that that the applicant was absent from this country from March 1985 to May 1989. However, neither counsel nor the applicant submits any evidence on appeal that would tend to establish that the applicant was present and residing in this country and not absent from the United States in that period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant has admitted that she exceeded the 45-day limit for a single absence from the United States during the requisite period, as set forth in 8 C.F.R. § 245a.2(h)(1), when she traveled to Pakistan to give birth to her daughter in March 1985 and did not return to this country until May of 1989. The applicant has failed to establish that an emergent reason delayed her return to the United States. For this reason, the applicant has failed to demonstrate that she resided in a 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 on this basis as well.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.