

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

h2

[Redacted]

PUBLIC COPY

FILE: [Redacted] MSC 02 245 63213

Office: NEW YORK

Date: JUN 15 2007

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:

[Redacted]

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. Any further inquiry must be made to that office.

Robert P. Wieman, 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, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because 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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). Specifically, the director concluded that the applicant had exceeded the forty-five day limit for a single absence, as well as the aggregate limit of 180 days for total absences, from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel asserts that the director erred in denying the application “based on the applicant’s statement” without according weight to the other evidence in the record, and failed to acknowledge additional evidence submitted by the applicant in response to the Notice of Intent to Deny (NOID). Counsel submits no additional documentation in support of the appeal.

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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

“Continuous unlawful residence” is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

During his LIFE Act adjustment interview on July 29, 2004, the applicant stated that he left the United States in August 1987 and returned in August 1988. In response to the director’s NOID dated December 14, 2004, the applicant, in a February 13, 2005 letter, stated that he “misspoke” when he gave the dates that he was absent from the United States. The applicant stated that, due to the passage of time, he could only give an approximate date that he left and he thought it was in 1987. The applicant further stated that he returned to the United States in 1987, and that he “misspoke” when he said he returned in 1988. The applicant submitted a January 5, 2005 notarized “affidavit” from [REDACTED] in which he stated that he had personal knowledge that the applicant left for Pakistan in 1987 and returned to the United States “with in [sic] a few weeks.” Mr. [REDACTED] did not indicate his relationship to the applicant or the basis of his personal knowledge of the applicant’s absence from the United States. The applicant submitted no objective evidence to corroborate his absence from the United States during this period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel states that the applicant was confused by the dates because he was not able to obtain and review a copy of his file prior to the interview. The record reflects that the district office received the applicant's request for a copy of his record on August 4, 2004, after his interview. Further, although the regulation provides that a decision on a properly filed appeal must be delayed pending receipt of a response to a request for a copy of the record of proceedings, no similar provision exists for delay in the initial adjudication of the application. 8 C.F.R. § 245a.20(b)(1). Neither counsel nor the applicant has requested a delay in the adjudication of the appeal pending receipt of a copy of the record of proceedings. Further, counsel did not indicate that he intended to submit a brief and/or additional evidence subsequent to his receipt of a copy of the record of proceedings.

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 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.

Although Citizenship and Immigration Services (CIS) 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).

In an affidavit to determine class membership, which he signed under penalty of perjury on January 6, 1992, the applicant stated that he first entered the United States in 1980. On a Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant stated that he left for Pakistan in November 1987 to visit his family and returned in December.¹ The applicant stated that he lived on [REDACTED] in Alexandria, Virginia from 1981 to 1988.

¹ Although the year 1987 is typed on the Form I-687, it appears to have been altered. The exact date that the applicant claims to have returned is unclear.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. An envelope addressed to the applicant in Alexandria, Virginia with a canceled postmark of July 20, 1982.
2. A December 18, 1991 letter from [REDACTED] in Arlington, Virginia, certifying that the applicant worked for the restaurant from February 1981 to March 12, 1988. The letter indicates that it was signed by the manager, however the signature of the individual signing the letter is illegible. Furthermore, the letter does not comply with the provisions of 8 C.F.R. § 245a.2(d)(3)(i), in that it does not indicate whether the information was taken from company records or the address of the applicant at the time of his employment. The applicant submitted no documentation to corroborate his employment with [REDACTED].
3. A December 15, 1991 "affidavit" from [REDACTED] in which he certified that he had known the applicant since 1981. Mr. [REDACTED] did not state the circumstances of his initial acquaintance with the applicant or that this acquaintance occurred and was maintained in the United States.
4. A March 14, 1991 letter from [REDACTED] certifying that the applicant worked for the company from April 10, 1988 to November 6, 1991. The signature of the person signing the letter is illegible and the letter does not reflect the title or position of the individual within the company's structure. While the letter contains phone numbers for the company, it does not identify the company's address. Additionally, the letter does not comply with the provisions of the regulations at 8 C.F.R. § 245a.2(d)(3)(i), in that it does not indicate whether the information was taken from company records or the address of the applicant at the time of his employment. Moreover, the letter is dated March 14, 1991 but purports to attest to the applicant's employment through November 6, 1991. The applicant submitted no documentation to corroborate his employment with [REDACTED].
5. An undated "affidavit" from [REDACTED] in which he certified that the applicant had lived with him at [REDACTED] in Brooklyn, New York from April 10, 1988 to November 6, 1991. The applicant did not identify this address as a prior residence on his Form I-687 application.

As discussed above, the applicant stated during his adjustment interview that he was absent from the United States for a year. While the applicant stated that this was just a misstatement on his part, caused by nervousness and an inability to review his record prior to the interview, he submitted no credible evidence to establish that he was in the United States during the requisite period, including from August 1987 to August 1988. Given this lack of credible evidence, it is determined that the applicant has failed to establish continuous residence in the U.S. for the required period.

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