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**U.S. Citizenship  
and Immigration  
Services**

*LL*

FILE:

MSC 02 065 63757

Office: HOUSTON

Date: MAY 23 2007

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. Any further inquiry must be made to that office.

*Robert P. Wiemann*  
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, Houston, Texas, 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.

On appeal, counsel asserts that the director abused his discretion and relied on extraneous information in denying the application. Counsel submits a brief and copies of previously submitted 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).

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 24, 1991, the applicant stated that he first arrived in the United States in July 1981 pursuant to a visitor's visa. The applicant stated that he violated his visa status by overstaying. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on January 24, 1991, the applicant stated that he had lived at [REDACTED] in Miami since July 1981, and that he had left the United States once during the qualifying period, from March to April 1983, when he returned to

Pakistan upon the death of his father. The applicant stated in his affidavit that he returned to the United States pursuant to a visa. The applicant also stated that he had been self-employed since August 1981, washing cars until April 1988 and mowing grass since May 1988.

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 August 17, 1991 sworn statement from [REDACTED], the applicant's brother, in which he stated that the applicant lived with him and paid rent of \$150.00 per month. [REDACTED] reiterated his statement in a December 27, 2004 sworn statement.
2. A September 6, 2001 affidavit from [REDACTED], in which he stated that he had been acquainted with the applicant in the United States since 1981. [REDACTED] did not indicate the nature of his relationship with the applicant or how he dated that relationship.
3. A September 6, 2001 affidavit from [REDACTED] in which he attested that he had been acquainted with the applicant in the United States since 1981, and that the applicant is a brother of the applicant's friend. [REDACTED] did not indicate how he dated his relationship with the applicant.
4. A September 10, 1981 affidavit from [REDACTED] in which he stated that he had been acquainted with the applicant in the United States since 1981, and that he had "family relations" with the applicant for the past 30 years.

The applicant also submitted sworn statements dated August 17, 1991 from [REDACTED] and [REDACTED] who stated that the applicant cut the grass at their houses but did not state when he began doing the job. Other documentation submitted by the applicant is subsequent to the qualifying period, and is therefore not probative in establishing the applicant's presence and residency in the United States during the requisite period.

The applicant stated on his Form I-687 application that he left the United States in March 1983 for Pakistan when his father died. According to the interviewer's notes taken during the applicant's June 24, 2003 LIFE Act interview, the applicant stated that he left the United States in April 1983 and stayed for two to three months, and that his father died "during those days." On his Form I-687 application, the applicant stated that he left the United States in March 1983 because of his father's death and remained until April 1983. In response to the Notice of Intent to Deny (NOID) dated December 6, 2004, the applicant stated that he returned to the United States in April 1983 pursuant to a B-2 nonimmigrant visitor's visa after an absence of less than 45 days. The death certificate for the applicant's father indicates that he died on February 26, 1983 and was buried the following day. The record does not reflect a documented entry by the applicant in April 1983 pursuant to a B2 visa, and the applicant submitted no other documentation to corroborate this entry. 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).

The applicant must establish that he resided continuously in the United States in an unlawful status from prior to January 1, 1982 through May 4, 1988. "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.]

The applicant stated during his interview that he was out of the United States for two to three months in 1983. While not addressed in the director's decision, there must, nevertheless, be a further determination as to whether the applicant's admitted 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."

In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. During his interview, the applicant stated that his father died "during those days." The interview notes are unclear as to whether the applicant meant that his father died prior to his trip or during the course of his trip. However, the record reflects that the applicant's father died on February 26, 1983. Therefore, assuming that the purpose of the applicant's trip was to attend to the circumstances surrounding his father's death, the applicant submitted no evidence that unexpected events delayed his return to the United States. Accordingly, the applicant's absence for two to three months in 1983 interrupted his continuous residency in the United States.

In his June 24, 2003 LIFE Act interview, the applicant made conflicting statements regarding his graduation, stating at one point that he graduated in 1981, and at another that he failed some subjects and therefore did not graduate. The applicant submitted a copy of his degree from the University of Karachi, which indicates that in 1983, he passed his examination and was awarded a Bachelor of Commerce. In an affidavit submitted in response to the NOID, the applicant stated that he left the United States in March 1983 and was gone for "less than 45 days," during which time he "appeared in the failed papers of [his] graduate studies," and was issued his degree. The applicant submitted no evidence to corroborate this statement. Additionally, the applicant stated that he left the United States again in November 1987 to get married. He also mentioned this absence during his June 24, 2003 interview. The applicant did not, however, list this absence on his Form I-687 application. 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).

The applicant stated that his initial entry into the United States was pursuant to a visa; however, he provided no evidence of the issuance and use of a visa in 1981. Additionally, in his letter accompanying the NOID, counsel stated that the visa was a five-year, multiple entry visa. The record, however, contains no corroboration of this assertion of counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

Assuming, however, that the applicant did enter the United States pursuant to the visa described by counsel, he could have been in a legal status at the beginning of the qualifying period and therefore statutorily ineligible for benefits under the LIFE Act.

The applicant submitted no contemporaneous evidence of his presence and residence in the United States during the requisite period. The four affidavits submitted by the applicant to support his application are either from relatives or contain insufficient detail to date his residency in the United States.

Accordingly, it is concluded 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.