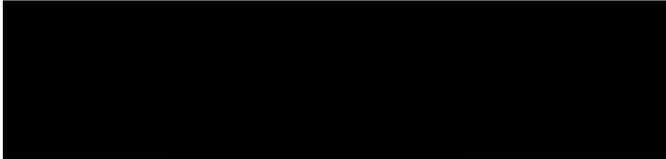


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FILE: [REDACTED]
MSC 02 138 60925

Office: OKLAHOMA CITY

Date: **APR 01 2008**

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 District Director, Oklahoma City, Oklahoma, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to establish his qualifying continuous physical presence in the United States.

On appeal, counsel for the applicant asserts that the applicant's continuous presence has been documented by affidavits from friends and employers and submits previously submitted documentation.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 applicant 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.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The record reflects that on February 15, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. In support of the application, the applicant submitted a previously submitted application for late legalization that contained the following relevant documents:

- A birth certificate issued on September 10, 1989, in Pakistan;
- A driver's license, issued on March 9, 1985;
- An untranslated photo identity document;
- Several pages from a passport;
- A handwritten employment letter from [REDACTED] of [REDACTED] in Elmhurst, Illinois, stating that the applicant worked there from February 15, 1986, to May 22, 1989;
- An employment letter, from the manager at [REDACTED], in Odessa, Texas, whose signature appears but is illegible, stating that the applicant worked there from June of 1981 until January of 1986, as a cook and a general all around employee; and,
- Several certifications from the applicant regarding his eligibility for adjustment of status under the LIFE Act.

On April 8, 2003, the director requested that the applicant submit a complete copy of his passport. The passport submitted in response to the director's request required an additional interview, which took place on August 24, 2005. During the interview, the applicant was confronted with inconsistencies found between the written assertions in his application and stamps in the passport he submitted. The interviewing officer told the applicant that the passport showed five trips back to Pakistan and asked the applicant how many times he had been back to Pakistan. The applicant replied that he had been back to Pakistan twice. When the interviewing officer asked the applicant why the passport showed five entries to Pakistan, the applicant replied that he used a false passport, that he substituted the picture, that everything else belonged to another person, and, that he paid about the equivalent of \$5000 for the passport in Pakistan. The interviewing officer then asked the applicant if he had ever used a passport for entry into

Pakistan and the applicant answered no, that he entered Pakistan without inspection. The interviewing officer asked the applicant when he had used the passport to enter the United States and the applicant replied that he only used it once to enter the United States on September 23, 1989, through Kennedy Airport in New York. The interviewing officer asked the applicant when he had taken his trips to Pakistan. The applicant replied that he left the United States in about August 1983 and came back within a month and that his second trip was in about September 1985 or 1986, but he was not sure, to check his application. The officer told the applicant that his application showed trips from August 13, 1989, to September 23, 1989, and again from September 10, 1987 to October 19, 1987. The officer asked the applicant if this was correct, and is so, was he saying that he had three trips. The applicant replied that it was two trips and that he didn't remember the dates.

On October 4, 2005, the director sent the applicant a Notice of Intent to Deny (NOID). The director listed the five entry stamps contained in the passport and the four entry stamps into the United States. The director referred to the applicant's inconsistent, and sometimes vague responses to questions posed to him during the interview. The director found that the applicant did not adequately explain those inconsistencies and that there were also inconsistencies between one employment letter submitted by the applicant and another. The director then concluded that the applicant was not physically present in the United States during the requisite time period. The director informed the applicant that he had 60 days from the receipt of the NOID to submit evidence to overcome the director's intent to deny his application. The applicant did not respond to the NOID.

On December 23, 2005, the director denied the application, concluding that the applicant was not continuously physically present in the United States during the requisite time period.

On appeal, counsel for the applicant asserts that the applicant's continuous presence has been documented by affidavits from friends and employers and submits previously submitted documentation.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he was continuously physically present in the United States during the requisite period. The only relevant documentation the applicant submitted in support of his Form I-485 application was the two letters of employment and the passport mentioned above.

The employment letters are insufficient to establish the applicant's continuous physical presence. These employment letters can be given little evidentiary weight. Specifically, the employers failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the employers failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. In addition, the employers failed to state what salary the applicant was paid. All of the employment letters lack sufficient detail to be found probative.

Although the applicant has submitted two employment letters in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

Regarding the inconsistencies between the two employment letters, the director seems to have read one letter as stating that the applicant worked at [REDACTED] from June 1981 to November 1989, the date the letter was written. Reading the letter in the light most favorable to the applicant, the letter can be read to say that the applicant worked at [REDACTED] from June 1981 until January 1986. This is more logical and is consistent with what the applicant has asserted. Therefore, there is no inconsistency between the two letters.

Counsel asserts that the applicant's continuous presence since before 1982 has been documented by a number of affidavits ranging from friends to employers. The record of proceeding only appears to contain the two employment letters mentioned above. No additional affidavits from friends were found in the record.

Finally, the passport submitted by the applicant can be given no evidentiary weight at all. The applicant has not resolved the inconsistencies the director mentioned between the date stamps in the passport and the applicant's own statements. The applicant's statements about his entries to and departures from the United States are inconsistent with the date stamps in the passport he claims to have used to enter the United States. The applicant was provided with the opportunity to resolve these inconsistencies on several occasions, including with his original LIFE Act application, in response to the NOID, during his interview, and on appeal. The applicant has neither explained the inconsistencies nor has he provided independent objective evidence to help resolve the inconsistencies.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States On September 23, 1989, at New York, New York, and to have resided for the duration of the requisite period in Texas and Illinois. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through December 31, 197, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is 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.