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U.S. Citizenship  
and Immigration  
Services

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FILE:   
MSC 02 302 61796

Office: DALLAS

Date: APR 17 2008

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 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Dallas, 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 finding that there was no valid, credible, or verifiable documentation to establish the applicant's entry into the United States in August 1981, using a nonimmigrant visa. The director also found that the applicant failed to provide credible and verifiable evidence of his unlawful physical presence in the United States during the requisite periods.

On appeal, counsel for the applicant asserts that the director ignored the substantial amount of evidence submitted to establish the applicant's physical presence in the United States between 1982 and 1988. Counsel further asserts that the director did not attempt to verify the applicant's date of entry through the affidavits and letters submitted by the applicant.

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 July 29, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On October 23, 2003, an adjudications officer interviewed the applicant regarding his application. The officer requested that the applicant submit additional evidence relating to his continuous residence and continuous physical presence in the United States. *The applicant did not respond to the director’s request.*

On August 11, 2005, the director issued a Notice of Intent to Deny (NOID) the application. The director stated that the applicant failed to submit credible and verifiable of his presence in the United States during the required time period before January 1, 1982, through May 4, 1988. The director informed the applicant that he had 30 days from the receipt of the NOID to submit evidence to overcome the director’s intent to deny his application.

On November 30, 2005, the director denied the application, concluding that there was no reason to believe it more likely than not that the applicant entered the United States prior to January 1, 1982, and maintained unlawful presence through 1986. *The director noted that the applicant stated that he entered the United States prior to January 1, 1982, but failed to provide information about his subsequent departures from the United States to Pakistan.*

On appeal, counsel for the applicant asserts that the director ignored the substantial amount of evidence submitted to establish the applicant’s physical presence in the United States between 1982 and 1988. Counsel further asserts that the director did not attempt to verify the applicant’s date of entry through the affidavits and letters submitted by the applicant.

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. Some of the evidence submitted is either undated or indicates that the applicant resided

in the United States after August 1987 and is not probative of residence before that date. The following evidence relates to the requisite period:

Employment Letters

- The applicant submitted a January 13, 1985, letter from ██████████ C.E.O. of Skyview Water Proofing. ██████████ stated that the applicant had been employed at Skyview Water Proofing from November 1981, through December 1984. Mr. ██████████ stated that the company paid the applicant \$3 per hour for one year and that after that, he got a raise of 50 cents for the next year, and 50 cents for the year after that. ██████████ stated that the applicant's job title was Labor and that he was a supportive, hard working, and honest person.
- The applicant also submitted a September 20, 1989, letter from the Director of Projects at S&A Construction. The Director of Projects stated that the applicant had been employed at the company for two years, and that his job title was Masonry and handyman. The Director of Projects stated that the applicant's job description was brick work, cleaning after the job was finished, helping the staff, and pointing. He also stated that the applicant worked for the company from April 1985, to August 1989.

The 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, failed to identify the location of such company records, and failed to state whether such records are accessible, or, in the alternative to state the reason why such records are unavailable. These two employment letters lack sufficient detail to be found probative.

In addition, the letter from S & A Construction contains an inconsistency for which the applicant has not provided an explanation. In one part of the letter, the Director of Projects stated that the applicant worked for S & A Construction for two years. In another part of the letter the Director of Projects states that the applicant worked for the company from April 1985, to August 1989. This adds up to four years, not two. 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 petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As S & A has not provided business records, pay stubs, or W-2 Forms, to corroborate the actual dates of employment and has not explained this inconsistency, this particular letter can be given little, if no evidentiary weight.

Although the applicant has submitted two employment letters in support of his application, he has not provided any contemporaneous evidence of his employment and residence in the United

States during the duration of the requisite period. The applicant did not submit pay stubs, W-2 forms, or tax returns to show that he worked at these places. The employers did not submit internal business records to establish his employment.

### Affidavits

- The applicant submitted an affidavit from [REDACTED]. Dr. [REDACTED] states his current address and the applicant's address at the time of his arrival in the United States. He states that the applicant came to the United States in 1981. He states that the applicant worked for a construction company and visited his house occasionally. He states that they used to be in touch over the phone. Dr. [REDACTED] states that when the applicant applied for amnesty in 1988, he was rejected because he traveled to Pakistan a couple of times and was really upset and depressed because he didn't qualify.
- The applicant also submitted an affidavit from [REDACTED] a journalist for an Urdu language newspaper in the United States. [REDACTED] states that he was introduced to the applicant in October 1987 by [REDACTED]. The applicant told [REDACTED] that he had just returned from Pakistan after a few weeks of stay with his family. Based on several meetings, [REDACTED] states that the applicant has potential to be a very good writer.
- The record also contains an affidavit from [REDACTED] Mr. [REDACTED] states that he has known the applicant for many years. He states that he met the applicant when the applicant was residing at [REDACTED] College Point, New York. He states that the applicant later moved to [REDACTED] College Point, New York. He states that the applicant was working for a construction company and that they used to pray together. Mr. [REDACTED] states that he and the applicant applied for Amnesty together and that the applicant was denied because he traveled to Pakistan for a few weeks due to family problems.
- The applicant submitted an affidavit from [REDACTED]. He states that when the applicant came to the live in the United States in November 1981 he started living with him at [REDACTED], College Point, NY 11356. The applicant later told [REDACTED] that he used someone else's passport and travel documents. He states that the applicant worked for a construction company, Sky View Water Proofing for almost three years and then worked for another construction company for approximately four years. He states that during that time they stayed in touch almost every weekend and Friday prayers.

These affidavits are of little probative value and can be given little evidentiary weight, as they are not sufficiently detailed. The affidavit from [REDACTED] reflects that he only met the applicant in 1987 and does not list the dates or frequency of their meetings. In addition, Mr. [REDACTED] does not provide the address where the applicant was residing at that time.

The affidavit from [REDACTED] does not explain how [REDACTED] met the applicant or how he knows the applicant came to the United States in 1981.

The affidavit from [REDACTED] states that he has known the applicant for several years, but does not state exactly how long the two have known each other or how they met. He states that they used to pray together but does not say where or how often.

The affidavit from [REDACTED] does not say how they met. He states that the applicant came to the United States in November 1981, but does not explain how he knows this. He does not say how long they lived together, or when they stopped living together, and provides no details about the time that they did live together. He states that they stayed in touch almost every weekend, but does not say how they were in touch or where the applicant was living at that time.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

The record of proceedings contains various other documents, including a 2002 Internal Revenue Service (IRS) Form 1040, U.S. Individual Tax Return, and a real estate lien note dated September 6, 2001. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, namely from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States August 1981, using another person's passport and nonimmigrant B-1 visa, and to have resided for the duration of the requisite period in Texas. 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.

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, 1977, 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.