



U.S. Citizenship
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FILE: [REDACTED]
MSC 02 232 65401

Office: NEW YORK

Date: AUG 26 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


for 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 (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the evidence submitted by the applicant is sufficient to establish that he has resided in the United States continuously in an unlawful status since 1981.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 its amenability to verification. See 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 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 applicant, a native of Pakistan who claims to have lived in the United States since January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 20, 2002. As evidence of his residence in the United States during the years 1981-1988 the applicant submitted two affidavits from the same affiant.

The two affidavits were from [redacted] a resident of Bensville, Illinois, dated April 25, 1990 and May 4, 1990, respectively. On the April 25, 1990, affidavit, the affiant stated that he knew that the applicant left the United States around May 1987 and returned around June 1987. On the May 4, 1990, affidavit, the affiant stated that he had known the applicant since January 1981, that the applicant has been a continuous resident of the United States since that time, that he and the applicant were friends and that he had personal knowledge that the applicant left the United States in May 1987 and returned in June 1987.

On April 24, 2006, the director issued a Notice of Intent to Deny (NOID), citing some inconsistencies between the applicant’s oral testimony at his LIFE legalization interview on April 19, 2004, and agency records, including information provided by the applicant on his Form I-485 and Form I-687. Specifically, the director noted that the applicant’s testimony on April 19, 2004, on the date of birth of his twins is inconsistent with information on the Form I-485, he filed on May 20, 2002. While the applicant stated on the Form I-485 that the twins were born on

February 25, 1988, he contradictorily testified at the interview that they were born on June 25, 1985, and did not submit any evidence that his wife was in the United States during the statutory period. The director noted that since the children were born in Pakistan that the applicant must have been in Pakistan at the time the children were conceived. The director also noted that the applicant stated on the Form G-325A dated May 16, 2006, which he submitted with his Form I-485 application, that he was married on September 10, 1992, however, he submitted a marriage certificate on February 27, 1995 attesting to a marriage date of June 12, 1981 in Pakistan. The director concluded that the inconsistencies undermined the credibility of the applicant's claim to have resided continuously in the United States since before January 1, 1981 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response the applicant offered some explanations for the evidentiary inconsistencies cited in the NOID and submitted additional documentation, including:

Photocopies of his children's birth certificates issued on April 4, 2006, indicating that the children were born on February 25, 1988.

A copy of the applicant's marriage certificate indicating that the applicant was married on June 12, 1981, in Lahore, Pakistan.

On July 28, 2006, the director issued a Notice of Decision denying the application. The director found that the applicant's rebuttal and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. The director concluded that the evidence of record failed to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, counsel asserts that the response of the applicant to the director's NOID and the evidence of record are sufficient to establish the applicant's eligibility for LIFE legalization. The applicant submitted an undated letter from [REDACTED], indicating that the applicant was his tenant at his property located at [REDACTED] Hollis, New York, from January 2, 1981 to November 30, 1981.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in

the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The affidavits from [REDACTED] dated April 25, 1990 and May 4, 1990, and the letter from [REDACTED] (undated) all have minimalist or fill-in-the-blank format with little personal input by the affiants. While they claim to have known the applicant since 1981, the affiants provide almost no information about the applicant's life in the United States, where he worked during the 1980s, and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of his personal relationship with the applicant in the United States during the 1980s. In addition, the letter from [REDACTED] does not indicate any other relationship with the applicant beyond 1981. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The AAO also notes that although the applicant claimed at his LIFE legalization interview on April 19, 2004, that he entered the United States in 1981, and has resided continuously in an unlawful status since then, there is ample evidence in the record to the contrary. For example, a copy of the applicant's passport submitted into evidence, which was issued by the Consulate General of Pakistan in New York City, on June 26, 1989, has a notation on Page 7 of the passport indicating that the applicant had traveled/held pervious passport [REDACTED] which was issued on June 25, 1985, in Lahore Pakistan.

The applicant stated on Form G-325A dated May 16, 2002, that he was married in Lahore Pakistan on September 10, 1992, and on the Form G-325A dated April 16, 2004, that he was married in Lahore, Pakistan in 1992, nonetheless, the applicant submitted a marriage certificate on appeal, indicating that he was married on June 12, 1981, in Lahore, Pakistan, thereby contradicting the information sworn to on the Form G-325A. The director specifically pointed to this inconsistency in the NOID and requested that the applicant submit independent evidence to reconcile the inconsistency, but he failed to do so.

The applicant submitted conflicting information regarding the date of birth of his twins. On the Form I-485 filed by the applicant on May 20, 2002, he stated that the twins were born on February 25, 1988. The applicant testified at his LIFE legalization interview on April 19, 2004, that the twins were born on June 25, 1985. On the Form I-687 completed by the applicant and dated October 21, 1997, the applicant listed the age of his daughter as 9 years and the age of his son as 7 years. It is inconceivable that the twins would have been born two years apart. The director specifically notified the applicant of this inconsistency in the NOID. Again, the applicant failed to submit independent objective evidence to reconcile the inconsistency.

The applicant completed and submitted two Form(s) I-687, dated April 26, 1990 and October 21, 1997, respectively. On the April 26, 1990 Form I-687, the applicant stated that he traveled to Pakistan in May 1987 and returned in June 1987, but did not list any absence on the

October 21, 1997 Form I-687. On the April 26, 1990 Form I-687, the applicant stated that he worked for █████ Construction Company in New York from 1981 to 1987, but did not list any employer on the October 21, 1997 Form I-687. The AAO notes that the applicant did not submit any document from █████ Construction Company or any other employer for the period 1981 through 1988.

The inconsistencies noted above, and the applicant's inability to reconcile these inconsistencies, undermine the credibility of his claim that he entered the United States in 1981 and resided continuously in an unlawful status through May 4, 1988. 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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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