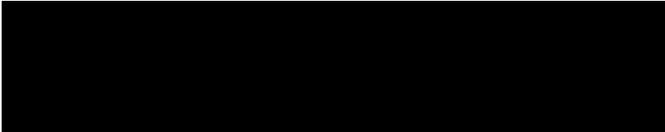


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Office: HOUSTON, TEXAS

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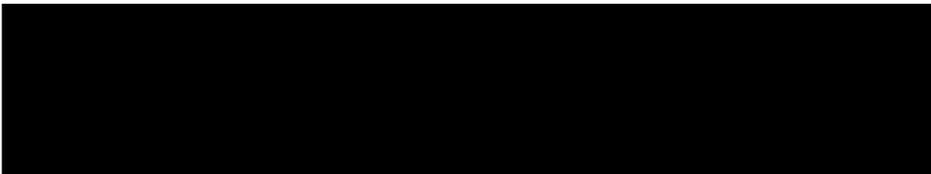
IN RE:

Applicant:



PETITION: 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. If your appeal was sustained, or if the matter 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 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director in Houston, Texas. 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 first entered the United States before January 1, 1982.

On appeal, the counsel submits a brief and two affidavits.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must also 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).

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 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 filed his application for permanent residence under the LIFE Act (Form I-485) on April 15, 2002. In a Notice of Intent to Deny (NOID), dated December 16, 2004, the director cited inconsistencies in the applicant's verbal testimony, sworn statements, and other documentation of record (mostly affidavits and letters) – in particular with regard to where the applicant lived and worked in Houston during the years 1981 to 1984 and the circumstances of his return to the United States from a trip to Pakistan in the summer of 1987 – as undermining the credibility of the applicant's claim to have entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from that date through May 4, 1988. The applicant was granted thirty days to submit additional evidence.

The applicant responded with a letter from counsel addressing the evidentiary inconsistencies cited in the NOID, an affidavit from the applicant, and two additional affidavits from individuals who claim to have known the applicant during the 1980s.

On June 27, 2005, the director denied the application on the ground that the evidence of record failed to establish the applicant's presence in the United States before January 1, 1982. Two previously submitted affidavits were the only evidence of the applicant's presence in the United States prior to 1982, the director noted, but each identified a different home address for the applicant during the years 1981 to 1984. The additional affidavits submitted in response to the NOID, the director indicated, offered no additional proof of the applicant's presence in the United States before January 1982.

On appeal counsel lists all of the affidavits in the record – including those prepared at the time of the CSS membership application in 1990, at the time of the application under the LIFE Act in 2002, and in response to the NOID in 2005, as well as three additional affidavits submitted with the appeal – addresses various “points of error” in the director's decision, and asserts that the decision did not comport with applicable departmental directives and case law. According to counsel, the third party affidavits, together with the applicant's own affidavits submitted in response to the NOID and on appeal, address and resolve all of the evidentiary discrepancies and inconsistencies cited by the director, and establish the applicant's entry into the United States before January 1, 1982, as well as his continuous unlawful residence in the country from then through May 4, 1988. The AAO does not agree.

The record contains little contemporaneous documentation from the years 1981-1988 that demonstrates the applicant's residence or physical presence in the United States during that time. The only such documents in the record are a receipt made out to the applicant from [REDACTED], a wholesale market in Houston, with a handwritten date of November 7, 1984, and three air mail envelopes addressed to the applicant in Houston with Pakistani postmarks dated September 4, 1984, April 4, 1985, and December 9, 1987. The authenticity of this documentation is questionable, however, since the Porras Pronto receipt has no date stamp or other official marking from the store and none of the three envelopes with Pakistani postmarks bears a receipt stamp from the U.S. Postal System. Moreover, none of this documentation, even if authentic, shows that the applicant was in the United States before September 1984.

The record includes three statements prepared in 1990 by store owners or managers in Houston, none in affidavit form, indicating that they employed the applicant during the time periods of February 1981 to September 1984, October 1984 to June 1987, and August 1987 to March 1990, respectively. None of the statements comports with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i), however, because

they were not prepared in sworn affidavit form, do not identify the applicant's address during his time of employment, do not indicate whether the information was taken from company records, and do not indicate whether such records are accessible for review. Moreover, the authors of the three statements have provided no documentary evidence of their own residence and presence in the United States during the years they claim to have employed the applicant.

The only other evidence of the applicant's residence and physical presence in the United States during the requisite time period from 1981 to 1988 are the numerous affidavits from acquaintances of the applicant dating from 1990 to 2005. As previously indicated, evidence must be evaluated not only by its quantity, but also by its quality. None of the affidavits has been supported by any documentation of the affiants' own identity and presence in the United States during the years 1981-1988, which calls into question the basis of their knowledge that the applicant was resident and physically present in the United States during that time. Many of the affiants do not claim to have known the applicant as far back as 1981. Those who do claim to have known the applicant since 1981 provide few details as to how they met him; the basis of their recollections many years later (up to a quarter of a century, in some cases) that their acquaintances with the applicant dated from the specific year 1981; and the extent of their interaction with the applicant during the rest of the 1980s. All of the affidavits prepared in 2002 lack the affiant's phone number and one – the affidavit of [REDACTED] – lacks both a phone number and an address, thereby undermining their verifiability. The credibility of some of the affidavits is further undermined because they contain statements that conflict with information provided by the applicant. The applicant specifically cites the affidavit of [REDACTED], prepared in 1990, as stating incorrectly that the two shared an apartment in Houston from 1981 to 1984, though the applicant indicates on appeal that he resided at another address during that time. Affidavits from [REDACTED] and [REDACTED] prepared in 2002 and 2005, respectively, attest that the applicant had been a member of the [REDACTED] in Clear Lake, Texas, since February 1981, and that he has also been attending a church in the Houston area since 1981, though the applicant stated on the Form I-687 he filed in 1990 that he had no affiliations with organizations of any kind.

Based on the foregoing analysis, the AAO determines that the applicant has failed to establish his eligibility for permanent resident status under the LIFE Act. The AAO concurs with the director's decision to deny the application for failure of the applicant to establish that he entered the United States before January 1, 1982. Beyond the decision of the director, the AAO concludes that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). Accordingly, the applicant's appeal will be dismissed, and the application denied.

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