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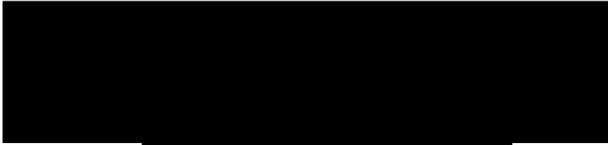
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] MSC 02 233 62244

Office: CHARLOTTE

Date: FEB 27 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 National Benefits Center. 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.

A handwritten signature in black ink, appearing to read "R. 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, Charlotte, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

On appeal, counsel asserts that the applicant submitted sufficient evidence to establish his claim. Counsel contends that the no explanation was given as to why the evidence was insufficient. Counsel requests that the director's decision be overturned.

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.* at 80. 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, 431 (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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In the Notice of Intent to Deny, dated April 22, 2004, the director stated that the applicant submitted no evidence to establish his entry into the United States before January 1, 1982, and continuous unlawful presence during the requisite period. The director granted the applicant thirty (30) days to submit a rebuttal or additional evidence.

Counsel asserted that the applicant submitted an employment letter and three affidavits to establish his claim, as well as his Form for Determination of Class Membership in *CCS v. Meese*, and Form I-687, Application for Status as a Temporary Resident.

In the Notice of Decision (NOD), dated June 16, 2005, the director stated that the employment records and affidavits from roommates were not acceptable as proof of continuous residence in the United States through May 4, 1988. The director denied the instant application and determined that the applicant was ineligible for adjustment of status under the LIFE Act.

In support of the applicant's claim, the record contains two photocopies of envelopes sent to the applicant from Pakistan. As the postmarks are illegible, the dates on the envelopes cannot be determined. These envelopes do not establish the applicant's residence in the United States during the requisite period.

The record contains a notarized letter by [REDACTED] of In & Out Express, dated May 12, 2003. The affiant stated that the applicant resided at [REDACTED] in Far Rockway, New York from 1981 through 1989. The affiant also stated he shared groceries and other living expenses with the applicant. The affiant provided the address of In & Out Express. The affiant did not provide any supporting documentation to corroborate his affidavit. There is no lease, rent receipts, or other bills in the record to substantiate his claim. Although not required, the affiant did not include any supporting documentation of the affiant's identity or presence in the United States.

It is also noted that the applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act on May 1, 1990. In his Form I-687, the applicant stated that he resided at [REDACTED], from August 1981 to July 1989. The record contains another Form I-687 signed by the applicant, which indicates the same information and apartment number. The affiant, who claims to have been the applicant's

roommate from 1981 through 1989, stated that they resided at [REDACTED]. The affiant stated a different street number and apartment number from the applicant's statements. This discrepancy brings into question the credibility of the affiant.

The record also contains a notarized letter by [REDACTED], dated May 30, 2003. The affiant stated that the applicant was employed from 1981 to 1989 at Island News Inc. located at LIRR Station Freeport in New York and was paid \$50.00 per week. The affiant provided his telephone number and address of residence. The affiant did not provide any supporting documentation to corroborate his affidavit. Although not required, the affiant did not include any supporting documentation of the affiant's identity or presence in the United States. It is noted that in both his Form I-687s, Question #36, the applicant listed his employment in the United States since his first entry. The applicant stated that he worked at Rite Time Dairy from August 1981 to July 1986 and at [REDACTED] from August 1986 to July 1989. The applicant did not indicate employment with Island News Inc. in either of his signed Form I-687s. This discrepancy casts doubt on the credibility of the affiant.

The record also contains a notarized and sworn to affidavit by [REDACTED], dated June 2, 2003. The affiant stated that the applicant was teaching the Qur-an to the community since 1981 to 1988, taught at the affiant's home every weekend and was paid \$100.00 per week. The affiant provided his telephone number and address of residence. The affiant did not provide any supporting documentation to corroborate his affidavit. Although not required, the affiant did not include any supporting documentation of the affiant's identity or presence in the United States. It is also noted that, in both his Form I-687s, the applicant did not indicate employment as a teacher until 1986 at [REDACTED]. This discrepancy casts doubt on the credibility of the affiant.

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 record contains no independent objective evidence to explain the above inconsistencies.

The AAO finds that the applicant has not provided any credible, 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. The totality of the evidence raises questions regarding the inconsistent statements of the applicant and his affiants. Also, the absence of sufficiently detailed, supporting 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.12(e), 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 discrepancies and minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

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 May 4, 1988, 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.