

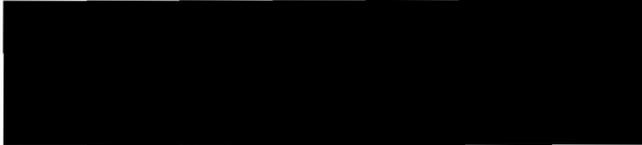
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**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC 02 063 60721

Office: New York

Date: **JAN 18 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:

SELF-REPRESENTED

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 initially denied by the District Director, New York, New York, and came before the Administrative Appeals Office (AAO) on appeal. The AAO remanded the case and the district director denied the application again. The matter is now before the AAO once again on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal from the initial denial, the applicant contended that the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) officer who conducted her interview did not take into account the evidence she submitted in support of her claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant asserted that testimony she provided at her interview was consistent, believable, and not rebutted by the Service.

In the subsequent decision, the district director again concluded that the applicant failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act. The applicant was granted thirty days to supplement her appeal. However, as of the date of this decision, the applicant has failed to submit a statement, brief, or additional evidence to supplement the record. Therefore, the record must be considered complete.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 "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 petitioner 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 petitioner 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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

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 Act on December 6, 1993. On the Form I-687 application, the applicant claimed that she first entered this country on January 15, 1980. The applicant noted that she subsequently reentered the United States on July 8, 1986 with a B-2 visitor's visa that had been previously issued in Karachi, Pakistan on May 6, 1986.

In support of her claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted a photocopy of a Form I-94, Arrival/Departure Record. The Form I-94 reflects that the applicant entered this country this country as a B-2 visitor at New York, New York on July 8, 1986 with a period of authorized stay until January 7, 1987 that was subsequently extended to February 9, 1987.

The applicant included an employment letter containing the letterhead of Wilshire Chemists in Elmhurst, New York that is signed by [REDACTED] Mr. [REDACTED] identified himself as a registered pharmacist and stated that the applicant worked as a cashier and counter help at Wilshire Chemists from October 1981 to 1985. While [REDACTED] attested to the applicant's employment for the stated period, he failed to provide the applicant's address of residence during her employment with Wilshire Chemists as required under 8 C.F.R. § 245a.2(d)(3)(i). In addition, [REDACTED] failed to provide any testimony that the applicant resided in the United States after 1985 through May 4, 1988.

The applicant included an employment letter containing the letterhead of the California Wallet Co., Inc., in Long Island City, New York that is signed by office manager, [REDACTED]. Mr. [REDACTED] stated that the applicant worked as a packaging person for this enterprise from August 1987 to April 1990. However, [REDACTED] failed to provide the applicant's address of residence during her employment with the California Wallet Co., as required under 8 C.F.R. § 245a.2(d)(3)(i). Further, [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 up to August 1987.

Subsequently, on December 2, 2001, the applicant submitted her Form I-485 LIFE Act application. In support of her claim of residence in the United States during the requisite period, the applicant provided copies of previously submitted documents as well as new evidence. The evidence contained in the record tends to corroborate the applicant's claim of residence after her entry into the United States with a B-2 visitor's visa on July 8, 1986. Nevertheless, the applicant failed to include any evidence relating to her residence in this country from prior to January 1, 1982 through July 7, 1986 with the Form I-485 LIFE Act application.

The record shows that the applicant subsequently appeared for an interview relating to her Form I-485 LIFE Act application at the CIS District Office in New York, New York on July 1, 2003. However, the notes of the interviewing officer do little to reveal the specific content of the questions presented to the applicant and the responses she provided during this interview and must be considered as skeletal and speculative in nature.

The district director determined that the applicant had failed to both submit sufficient evidence and provide credible testimony to establish her continuous residence in the United States from prior to January 1, 1982 to the date of her entry into this country with a B-2 visitor's visa on July 8, 1986. The district director concluded that the applicant was not eligible to adjust to permanent residence pursuant to section 1104(c)(2)(B) of the LIFE Act and denied the application on August 11, 2003.

The applicant appealed the denial of her Form I-485 Life Act application to the AAO. Upon review, the AAO determined that the district director had denied the application without first issuing a notice of intent to deny to the applicant as required by 8 C.F.R. § 245a.20(a)(2). The AAO remanded the case on January 6, 2005 in order for the district director to issue a notice of intent to deny prior to denying the application.

On April 25, 2005, the district director issued a notice of intent to deny to the applicant informing her of CIS's intent to deny her application because she failed to submit sufficient evidence of continuous unlawful residence in the United States from prior to January 1, 1982 through the date of her entry into this country with a B-2 visitor's visa on July 8, 1986. In addition, the district director noted that the applicant and her husband had both provided contradictory testimony relating to her claim of residence in this country for the requisite period at each of their respective interviews. However, as discussed previously, the evidence in the record relating to the applicant's testimony at her interview on July 1, 2003 is skeletal and speculative in nature. Further, the record does not contain sufficient documentation to establish the content of testimony provided by the applicant's husband at any interview conducted by the Service of CIS through the course of these proceedings. Regardless, the district director's conclusions regarding the effect of testimony provided by the applicant and her husband must be considered as harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(f). The applicant was granted thirty days to respond to the notice.

The record reflects that the applicant failed to respond to the notice. The district director determined that the applicant failed to submit sufficient evidence demonstrating her residence in the United States in an unlawful status since prior to January 1, 1982, and, therefore, denied the Form I-485 LIFE Act application again on June 6, 2005. As has been noted, the applicant failed to submit any additional material to supplement her appeal.

On appeal from the initial denial, the applicant contended that the affidavits provided by her friends and acquaintances are sufficient evidence to support her claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. However, the applicant has failed to provide any affidavits attesting to her residence in this country for the period in question but instead has provided only two employment letters to support her claim of residence. These two employment letters are of minimal probative value as neither employer attested to the applicant's residence in the United States for the entire requisite period and neither employer provided the applicant's address of residence during her purported employment as required under 8 C.F.R. § 245a.2(d)(3)(i).

The absence of sufficiently detailed supporting documentation seriously undermines the credibility of both the applicant's claim of residence for the period in question and the credibility of the documents submitted in support of such 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. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E-- M--*, 20 I&N Dec. 77.

Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

"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.

The applicant testified that she traveled to Pakistan to retrieve her children from an unspecified date in June 1986 to July 8, 1986 at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982. However, the applicant offered conflicting testimony on the Form I-687 application by indicating that the B-2 visitor's visa she utilized to enter this country on July 8, 1986 had been issued in Karachi, Pakistan on May 6, 1986. A review of the electronic record confirms that the applicant's B-2 visitor's visa was issued to the applicant in Karachi, Pakistan on May 6, 1986. Clearly, the applicant was present at the United States Consulate in Karachi, Pakistan when she was issued a B-2 visitor's visa on May 6, 1986. Therefore, the applicant had to be absent from the United States from at least May 6, 1986, the date she was issued the B-2 visitor's visa in Karachi, Pakistan, to July 8, 1986 when she utilized the visa to enter this country. Such an absence, consisting of at least sixty-three days, exceeds the forty-five day limit allowed for a single absence from this country in the period between January 1, 1982 and May 4, 1988. The applicant has claimed that she traveled to Pakistan to retrieve her children and failed to assert that she experienced any exigent circumstances that delayed her purported return to the United States. Therefore, any purported delay the applicant may have experienced in accomplishing the purposes of this trip cannot be considered to be due to an emergent reason within the meaning of 8 C.F.R. § 245a.15(c)(1). Even if the applicant had overcome that basis of the district director's denial relating to her failure to establish continuous unlawful residence in the United States during the requisite period, this admitted absence would have interrupted any period of continuous unlawful residence in this country that may have been established prior to the date that such absence began.

Given that the applicant's own testimony and the electronic record establish that she exceeded the forty-five day limit allowed for a single absence from this country in the period from January 1, 1982 to May 4, 1988, she has failed to establish having resided in continuous unlawful status in the United States for such period as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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