



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

L 2

[Redacted]

FILE: [Redacted] Office: HOUSTON Date: **JAN 22 2008**  
MSC 02 064 60670

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:

[Redacted]

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 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.

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, Houston, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had (1) continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988; or (2) maintained continuous physical presence in the in the United States during the period from November 6, 1986 through May 4, 1988.

On appeal, counsel states that the applicant has submitted substantial documentary evidence including letters from former employers and affidavits from friends. He asserts that the applicant has met his burden of proof and has established his eligibility for permanent resident status under the LIFE Act, and alleges that the director failed to fairly weigh and evaluate the evidence provided. In support of the appeal, two new affidavits are submitted.

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).

Although Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The evidence demonstrates that the applicant initially entered the United States in 1969 on an F-1 visa. He returned to Pakistan in 1974, then returned to the United States and completed his educational studies in 1981. On Form I-687, Application for Status as a Temporary Resident, which he signed under penalty of perjury on July 31, 1990, the applicant claimed that since January 1, 1982, he departed the United States one time to attend the funeral of his grandmother. The applicant claimed that his departure was from June 22, 1987 to July 12, 1987. In support of his absence, he submits a copy of his grandmother's death certificate and a receipt for purchases made in Pakistan during this period. His affidavit for class membership, also signed under penalty of perjury on July 31, 1990, corroborates this claim, yet lists his date of first entry to the United States as 1974 rather than 1969.

Regarding his residence during the relevant period, the applicant claimed to reside at the following addresses:

January 1980 to December 1983:  
January 1984 to March 1990:



The applicant lists his employers during this period as follows:

February 1982 to November 1983:  
February 1984 to November 1986:  
January 1987 to April 1988:



In an attempt to establish continuous unlawful residence since before January 1, 1982 and continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as claimed, the applicant furnished the following evidence:

- (1) Social Security statement dated October 23, 2003, showing his employment history from 1975 to 2002. It is noted that the applicant had no reported earnings for the years 1983, 1984, 1985, 1986, 1987, 1988 and 1989.
- (2) Diploma dated August 14, 1981 from Northern Illinois University, indicating that the applicant earned a Master of Arts.
- (3) Illinois driver's license for the applicant, issued on October 12, 1983.
- (4) Capital Air passenger ticket dated May 22, 1983, indicating that the applicant traveled between New York and Chicago.
- (5) Two receipts dated September 15, 1983 from Ambuy Gem Corp. for the purchase of emeralds. The receipts are addressed to the applicant under the care of Modern Watch Co., [REDACTED]
- (6) Undated statement from [REDACTED], claiming that the applicant lived with him as a tenant at 10638 Sherburn Drive from 1984 to the present.
- (7) Statement dated December 11, 1986 by [REDACTED] Office Manager of Petrofibres International, Inc., claiming that the applicant worked with them as contract labor from February 1984 to November 1986.
- (8) Statement dated June 14, 1988 by [REDACTED] Manager of Texan International, claiming that the applicant worked for the company in the capacity of supervisor from January 1987 to April 1988.
- (9) Form W-2 for 1988, indicating that the applicant earned \$7875.00 from GLAIC, Inc.

The applicant also submitted an abundance of documentation, such as Forms 1040, U.S. Individual Income Tax Return and Forms W-2 for the years 1976 to 1980, in addition to correspondence and school documentation for various periods in 1981.

On July 23, 2004, CIS issued a Notice of Intent to Deny the application. The district director noted that despite the applicant's claim that he continually resided in the United States since 1974, the record did not contain credible evidence to support a finding that the applicant was continually present from 1982 through 1988. The district director noted that during the applicant's interview on September 5, 2003, the applicant affirmed that he had departed the United States only one time in June of 1987. The director further noted that despite submitting evidence of his marriage in Pakistan on December 27, 1983, the applicant did not acknowledge this departure to Pakistan. Finally, the director pointed out that the applicant's son and daughter were born in Pakistan and the United Kingdom on October 7, 1984 and February 19, 1988, respectively. Although the applicant claimed his wife's first trip to the United States was in 1990, he did not acknowledge his absence from the United States during the periods in which his children were conceived.

In rebuttal, the applicant submitted an affidavit dated August 23, 2004. In the affidavit, the applicant claimed that he was not asked how many times he was absent from the United States during his interview, and confirms that he was absent twice during the relevant period: from December 1983 to January 1984 for his marriage, and from June 1987 to July 1987 for the funeral of his grandmother. He further acknowledged that both of his children were conceived during these periods.

The applicant also submitted the following two affidavits:

- (1) Affidavit dated August 18, 2004 by [REDACTED] claiming he has known the applicant since 1974 when he was living in Rochelle, Illinois. He claims that the applicant graduated from NIU in 1981, returned to Pakistan to get married in 1983, and moved to Houston, Texas in 1984.
- (2) Affidavit dated August 20, 2004 by [REDACTED] claiming he has known the applicant since 1973 when he was working for [REDACTED]. He claims that the applicant graduated from NIU in 1981, returned to Pakistan in 1983, then came back to Illinois and lived in DeKalb. He claims that the applicant eventually moved to Houston.

The director denied the application on October 27, 2004, noting that there was insufficient evidence to show that he was unlawfully present in the United States from before January 1, 1982, the beginning of the qualifying period, through May 4, 1988. The director also noted that the applicant had failed to establish that he was continuously physically present in the United States from November 6, 1986 through May 4, 1998. Specifically, the director focused on the inconsistencies in both his verbal testimony at the interview and the inconsistencies in the documentary evidence submitted. The director concluded that the applicant was statutorily ineligible because he was absent from the United States for more than 45 days at one time during the relevant period.

In support of the appeal, counsel filed supplemental arguments and two new affidavits on June 13, 2005. The cover letter asserts that while the applicant was in fact absent in 1983 to get married, the trip lasted approximately 30 days. He further notes that the applicant disclosed the dates of his second trip to Pakistan, from June 22, 1987 to July 12, 1987, for a total of 22 days. Counsel points out that neither trip exceeded 45 days in duration.

The applicant also submits the following new evidence in support of the appeal:

- (1) Affidavit dated March 3, 2005 by [REDACTED] claiming that he met the applicant in the late 1970's when a friend recommended that he stay in the applicant's apartment. He claims that they spoke on occasion during that period, and became reacquainted when the applicant moved to Houston in 1984. The affiant claims that he owned Petrofibres International, Inc., and that he offered the applicant a full-time position as contract labor, where he worked on a full-time basis from February 1984 to November 1986 as a clerk and cashier. He claims that the applicant was paid approximately \$1,000 per month in cash.
- (2) Affidavit dated March 2, 2003 by [REDACTED] claiming that he has known the applicant since the sixth grade. He claims that they lived together during the 1970's, and that

they became reacquainted when the applicant returned from Pakistan in 1984 and moved to Houston. He claims they were roommates from January 1984 to March 1990.

The first issue on appeal is whether the applicant has demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, as required by 8 C.F.R. § 245a.11(b).

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.

Here, the submitted evidence is not relevant, probative, and credible.

It appears from the record that the applicant was certainly present in the United States before January 1, 1982. His entry in to the country is documented, and the record contains evidence that he received a master's degree in August 1981. His social security records also indicated that he was employed in the United States in 1981 and 1982.

Upon review of the director's decision, the AAO notes that the director's conclusion that the applicant was absent from the United States for more than 45 days at one time is misplaced. There is insufficient documentary evidence to support the director's conclusion that the applicant is statutorily ineligible. As a result, the director's comments pertaining to this issue will be withdrawn.

However, the director correctly noted that the applicant's presence in and absences from the United States cannot be accurately verified for this period. The applicant claims that he was absent for approximately 30 days from December 1983 to January 1984 when he returned to Pakistan to marry his wife. There is no documentation of his entry into or exit from the country, and the applicant claims he re-entered illegally. However, the evidence pertaining to the applicant's presence in the United States from 1983 to May 4, 1988 is minimal at best.

Although the applicant submits a copy of his Illinois driver's license, issued in October 1983, there is insufficient evidence to support a finding that the applicant was continuously residing in an unlawful status

and continuously present during the relevant periods. Most importantly is the fact that the applicant's social security statement lists no wages earned for the years 1983, 1984, 1985, 1986, 1987, and 1988.<sup>1</sup>

While an employment letter from Petrofibres, dated December 11, 1986, claims that he was employed with the company as a contractor from 1984 to 1986, and an affidavit by the owner of the company claims that the applicant was paid in cash, the fact remains that there is no documentation to support the claim that he actually was employed during this period. The employment letter fails to state whether the information was taken from official company records, nor does it explain how and where such records are maintained. Furthermore, the employment letter from [REDACTED] at Texan International likewise omits this critical information.

Despite several affidavits from acquaintances claiming that the applicant was present in the United States continuously after his 1983 marriage, these affidavits are likewise insufficient. While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

The affidavits submitted in support of this application fall far short of meeting the above criteria. Most of them omit the origin of the information they attest to, and they provide only general overviews, not specific details, regarding the applicant's life and employment during the relevant period. There is no definitive evidence, therefore, to prove or disprove the applicant's presence in the United States after his December 27, 1983 marriage in Pakistan.

Although the applicant claims he returned to the United States in January 1984, he likewise claims that he entered without inspection. As a result, there is no documentary evidence in the form of an arrival-departure record or stamped passport to verify the exact date of entry. This, coupled with the contradictions in the applicant's testimony and the lack of recorded income in the United States suggests that the applicant remained in Pakistan after his marriage, and returned to the United States with his wife in March 1990. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice

---

<sup>1</sup> In addition, no wages were earned in 1989, but this year falls outside of the relevant period.

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). Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Id.* at 582.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

Given the absence of contemporaneous documentation and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 or that he maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988. Therefore, the applicant 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.