

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

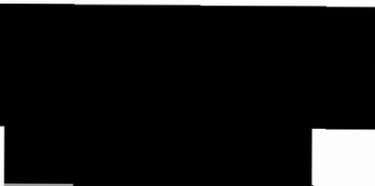


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE:



Office: CHICAGO

Date: JUL 09 2008

MSC 01 314 60609

IN RE:

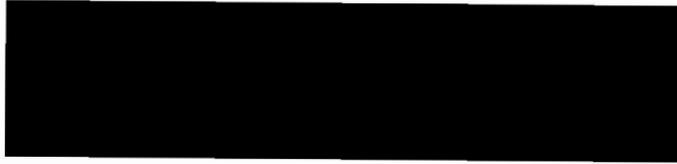
Applicant:



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:



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

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982, through May 4, 1988.

On appeal, counsel asserts that the director failed to give proper weight to the affidavits submitted by the applicant. Counsel submits a brief in support of the appeal.

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; 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 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 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.

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).

On a form to determine class membership, which he signed under penalty of perjury on April 17, 1990, the applicant stated that he first entered the United States in June 1980, when he crossed the border without inspection. He stated that he last left the United States on September 16, 1987, to visit Canada and returned in November 1987. In an affidavit to determine class membership, which he signed under penalty of perjury on April 20, 1990, the applicant stated that he left the United States on August 20, 1987, to visit Pakistan and returned on November 20, 1987. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on April 17, 1990, the applicant

stated that he was absent from the United States only once during the requisite period when he visited Canada. The applicant stated that he returned in November 1987; however, the date of his departure is unclear. The applicant stated that during the qualifying period, he lived at the following addresses in Chicago, Illinois: [REDACTED] from July 1980 to February 1983, [REDACTED] from March 1983 to April 1986, [REDACTED] from May 1986 to April 1988, and [REDACTED] from May 1988 to the date of his Form I-687 application.

The applicant also stated that from July 1980 to August 1983, he worked at National Submarines in Chicago as a cook, as a cook for the House of Submarines from September 1983 to July 1986, and as a self-employed flea marketer from August 1986 to the date of his Form I-687 application.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A July 7, 2001, affidavit from [REDACTED], in which he stated the he had known the applicant since 1980. The affiant stated that he was close friends with the applicant. However, he did not indicate the length of their relationship, the circumstances surrounding their initial acquaintance, or that the applicant had continuously lived in the United States throughout the qualifying period.
2. A June 11, 2001, affidavit from [REDACTED], in which he stated that the applicant had resided in the United States since 1981. However, the affiant did not state his relationship with the applicant or the basis of his knowledge of the applicant's residency in the United States.
3. An April 20, 1990, affidavit from [REDACTED], in which he stated that the applicant is his best friend and that to his personal knowledge, the applicant had resided in the United States since 1981. The affiant did not indicate the length of his friendship with the applicant, the circumstances surrounding their initial acquaintance, or the basis of his knowledge of the applicant's continued residence in the United States. The affiant stated that the applicant left the United States on August 20 to visit Pakistan and returned on November 20. However, the affiant did not indicate the year of the applicant's absence or the basis of his knowledge of the applicant's absence. In a May 10, 2001, affidavit, the affiant reaffirmed his relationship with the applicant and again stated that the applicant had resided in the United States since 1981. The affiant provided no additional details regarding his knowledge of the applicant's continued residence in the United States.
4. An August 26, 2003, letter from [REDACTED], who stated that the applicant was referred to him by a family member, and he treated the applicant for a vision problem without charge. Dr. [REDACTED] thought the visit occurred near the end of 1981, and that the applicant required no follow up. Dr. [REDACTED] did not indicate how he attempted to date his treatment of the applicant.
5. A September 22, 2003, letter from [REDACTED] of [REDACTED] s. Mr. [REDACTED] stated that "they" had known the applicant since 1982, and that during "those years" the applicant worked for National Submarine and the House of Submarine. Mr. [REDACTED] stated that the applicant ordered from their company during this time. Mr. [REDACTED] did not indicate his position with the company or the source that he relied upon in providing information about the applicant.
6. A September 19, 2003, letter from Brooks Hardware, signed by [REDACTED] as the owner. Mr. [REDACTED] stated that the applicant used to buy supplies from Yellow Front Hardware from 1983 to 1989. Mr. [REDACTED] did not indicate the connection he may have had with Yellow Front Hardware or the

basis of his knowledge regarding the applicants' patronage of the store. In addition, in a May 2, 2006, phone interview with CIS, Mr. [REDACTED] denied knowing the applicant.

7. A September 2, 2003, statement from [REDACTED], who identified himself as a medical doctor, and stated that the applicant had been under his medical care since December 23, 1985. The applicant also submitted copies of his medical records from [REDACTED], showing that he treated the applicant in December 1985 and January 1986.
8. A September 17, 2003, letter from Modern Accounting and Insurance, signed by [REDACTED] as president. Mr. [REDACTED] certified that the applicant was an "associate" with the company from 1986 to 1988.
9. An April 18, 1990, affidavit from [REDACTED] in which he stated that the applicant left the United States on September 16, 1987, to visit Canada. The affiant stated that he was aware of the applicant's absence because he loaned him money for his tour.

In a March 23, 2006, Notice of Intent to Deny (NOID), the director informed the applicant that his evidence was insufficient to meet his burden of proof, and requested that the applicant submit additional evidence of his eligibility for adjustment of status under the LIFE Act. In response, the applicant submitted the following additional documentation relevant to the qualifying period:

10. A copy of a September 18, 2003, letter from [REDACTED], in which he stated that the applicant was a paying guest in his home at Apartment [REDACTED] in Edison, New Jersey, from June to July 1980.
11. A February 25, 2005, statement from Mr. [REDACTED], in which he certified that he had known the applicant since March 1985. Mr. [REDACTED] then contradicts himself by stating that he and the applicant had known each other in Pakistan and grew up as childhood friends. Mr. [REDACTED] stated that he helped the applicant to get settled when he first came to the United States by helping him find a job and later in starting his own business. In a phone interview, Mr. [REDACTED] stated that he came to the United States in 1985 and met the applicant in Chicago in 1986.
12. Copies of photographs of the applicant showing a date of October 16, 1986. One photograph clearly shows a Chicago background; however, nothing in the photographs provides evidence that the applicant resided in the United States during the relevant period.

The director determined that the evidence submitted by the applicant did not overcome the proposed grounds for denial set forth in the NOID and denied the application on May 5, 2006.

On appeal, counsel asserts that the director denied the application in violation of the statute, regulations, and internal policies of CIS. Citing a February 13, 1989, memorandum from the Office of the Director of the Eastern Regional Processing Facility, counsel alleges that the director did not consider the applicant's affidavits and other documentation, and thereby failed to comply with the directions in the memorandum. Counsel's arguments are without merit. The record clearly shows that the director considered the documentation submitted by the applicant and attempted to verify the information provided. The director advised the applicant that two of those providing evidence on his behalf had provided information contradictory to their earlier statements.

On appeal, the applicant submits copies of a May 31, 2006, statement from [REDACTED] and an undated letter from [REDACTED], in which they both state that they were busy and misspoke to the CIS interviewer.

Mr. [REDACTED] certifies that he has knowledge of the applicant's presence in the United States since May 1985, and that he "might have given [the] incorrect month and year" of the applicant's residence. Mr. [REDACTED] stated in his February 25, 2005, statement that the applicant came to the United States in March 1985, and during his interview he stated that he himself arrived in 1985 and met the applicant in 1986. 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). Mr. [REDACTED]'s statement on appeal, without any corroborating evidence, does not meet the applicant's burden of proof.

The photocopy of [REDACTED] statement truncates the date that he allegedly met the applicant; however, he states that the applicant *did business* with his store at some period in the 1980's. However, we note that in his earlier statement, [REDACTED] stated that the applicant patronized Yellow Front Hardware. [REDACTED] did not indicate his relationship with Yellow Front Hardware, but stated that he is now "a business owner at Brooks Hardware." [REDACTED] did not state that the applicant had ever patronized Brooks Hardware, and did not state the source of the information that he provided about the applicant.

The applicant submitted statements from two friends who attest to his presence and residence in the United States in 1980 and 1981. However, neither indicated when, where or how they became acquainted with the applicant. [REDACTED] stated that the applicant did business with his corporation but did not state how he dated the applicant's business relationship with his company. Additionally, [REDACTED] saw the applicant once, and could only guess at the date that he treated the applicant. His statement does not indicate how he dated his treatment of the applicant.

Furthermore, on his Form G-325A, Biographic Information, which he signed under penalty of perjury, the applicant stated that he was married in Pakistan on July 20, 1983. The applicant did not admit to an absence from the United States during 1983 and did not otherwise explain this discrepancy during his LIFE Act application process. We note, however, that the record reflects that on May 20, 2005, the applicant filed a Form I-687 application pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements). (CIS receipt number MSC 05 232 10406). On this application, the applicant admitted that he left the United States in June 1983 to get married in Pakistan and returned in November 1983. He also stated that he left again for Pakistan in September 1987 to visit his family and returned in November 1987.

The applicant stated on his April 17, 1990, form to determine class membership, that he left the United States on September 16, 1987, to visit Canada and returned in November 1987. In an April 20, 1990, affidavit, the applicant stated that he left the United States on August 20, 1987, to visit Pakistan and returned on November 20, 1987. An April 18, 1990, affidavit from [REDACTED] corroborates the applicant's statement that he went to Canada in September 1987, while an April 20, 1990, affidavit from [REDACTED] supports the applicant's statement that he went to Pakistan in August 1987. The applicant's failure to admit to the 1983 absence and his changing story on his 1987 absence casts doubt on his credibility and that of the evidence he submitted. Doubt cast on any aspect of the applicant's proof may,

of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. at 591.

Additionally, the applicant's admission that he was out of the United States from August or September 1987 to November 20, 1987, would indicate that he exceeded the 45-day limit for a single absence from the United States, as set forth in 8 C.F.R. § 245a.15(c)(1).

The regulation at 8 C.F.R. § 245a.15(c)(1) defines "continuous unlawful residence" as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

Therefore, if the applicant returned to the United States on November 20, 1987, then he would have been absent for a period of 92 days if he left on August 20, and 65 days if he left on September 16. Accordingly, either absence would have been sufficient to interrupt his continuous residence in the United States. This constitutes an additional ground for dismissal of the appeal. 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). We note that on his 2005 Form I-687 application, the applicant also admitted to being out of the United States from June to November of 1983. This five-month absence would also exceed the aggregate limit of 180 days, as set forth in the above-cited regulation.

Given the unresolved contradictions in the record and the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

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.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

The applicant's appeal of the director's denial of his Form I-687 application is not at issue in this decision.

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