

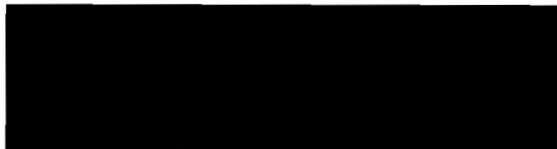
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and Immigration
Services

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FILE:



Office: CHICAGO

Date:

JUL 18 2008

MSC 02 192 61407

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.

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 (director) in Chicago, Illinois. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act.

On appeal counsel asserts that the applicant satisfies the requirements for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must 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 its amenability to verification. See 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, a native of Pakistan who claims to have lived in the United States since 1981, filed her application for permanent resident status under the LIFE Act (Form I-485) on April 10, 2002.

On May 9, 2003 the director issued a Notice of Intent to Deny (NOID). The director indicated that the evidence submitted by the applicant of her residence in the United States during the years 1981 to 1988 was insufficient to establish the applicant's eligibility for LIFE legalization. The director granted the applicant 30 days to submit additional evidence.

Counsel responded on June 12, 2003, with a two-page letter asserting that the documentation of record and the applicant's own testimony were sufficient to establish, by a preponderance of the evidence, that she had resided continuously in the United States during the requisite period for legalization under the LIFE Act.

On July 21, 2003, the director denied the application on the ground that the evidence submitted by the applicant failed to establish, by a preponderance of the evidence, that she had resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required to be eligible for permanent resident status under the LIFE Act.¹

The applicant filed a timely appeal (Form I-290B) through counsel. On the appeal form counsel asserted that the director erred in denying the application, that the applicant meets all the statutory requirements for legalization under the LIFE Act, and that she complied with all of the director's requests. Counsel indicated that a brief and/or additional evidence would be submitted within 30 days. No such materials were submitted in the next 30 days, however, or any time thereafter, as confirmed by counsel on July 10, 2008.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that she has not.

There is no contemporary documentation in the record demonstrating the applicant's presence in the United States before 1989. For someone claiming to have lived in the country since 1981, it is noteworthy that she cannot produce a solitary piece of documentary evidence from then

¹ On February 1, 2006, the director also denied an application for temporary resident status (Form I-687) which the applicant had filed on December 6, 2004 (MSC 05 067 10086). The applicant did not appeal that decision.

through May 4, 1988, the requisite period of continuous residence in the United States for an alien seeking legalization under the LIFE Act.

In the NOID, as well as in the decision, the director referenced an affidavit by the applicant, dated March 23, 1990, in which she claims that she first entered the United States on February 11, 1981, and departed the United States only four times – on short family-related trips to Pakistan – during the rest of the 1980s. The only document in the record that supports this claim is a brief statement by [REDACTED], dated March 11, 1990, that he employed the applicant as a babysitter from May 15, 1981 to April 9, 1987. Mr. [REDACTED] did not provide his address in the statement,² and did not submit any documentation verifying his identity. He did not indicate how often the applicant worked for him, her rate of pay and mode of payment, and whether there were significant gaps in her service. Nor did Mr. [REDACTED] provide any documentation from the six years in question – such as photographs, letters, and the like – that demonstrate the applicant's employment relationship with him at that time. For the reasons discussed above, the statement by [REDACTED] has little evidentiary weight.

Given the lack of probative evidence in the record, the AAO concurs with the director that the applicant has failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

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

² In a Form I-687 (application for temporary resident status) she filed on March 26, 1990, the applicant identified [REDACTED] address as [REDACTED] in Chicago.