



U.S. Citizenship
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[REDACTED]

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FILE: [REDACTED]
MSC 01 320 60203

Office: DALLAS

Date: **MAY 23 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:

[REDACTED]

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.

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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he had continuously resided in the United States in an unlawful status from prior to January 1, 1982, through May 4, 1988.

On appeal, counsel for the applicant submits a brief and additional documentation.

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 states 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.

The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documents that an applicant may submit as evidence in support of his or her application.

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.

While affidavits may be accepted as "other relevant documentation" in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's unlawful continuous residence during the requisite time period. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The record reflects that the applicant, a native and citizen of Pakistan, claims to have entered the United States without inspection on September 4, 1981, at San Isidro, California. In or about April 1990, the applicant submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act). In support of that application, the applicant submitted a self-affirming affidavit stating that he had resided in the United States since September 4, 1981. He also submitted:

1. A letter, undated and not notarized, from an unidentified person. This document has no evidentiary value.
2. An affidavit, notarized on April 7, 1990, from _____ of Los Angeles, California, stating that she had known the applicant since October 1981, and that the applicant traveled to Pakistan from June 14, 1987, to July 15, 1987. The name of the applicant and place to which he returned in 1987 have obviously been altered (whited-out) – changed from "_____" to "_____" and from "India," to "Pakistan." Due to these alterations, this document also has no evidentiary value.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, on August 16, 2001. On May 24, 2004, the applicant was interviewed in connection with his application. At that time, he was issued a request (on a Form I-72) to provide additional documents establishing his presence in the United States before January 1, 1982, through May 4, 1988. The request specifically noted that such evidence may include "church records, school records, medical records, lease agreements, contracts for major purchases, deeds, etc...."

In response, counsel provided the following documents:

3. An affidavit, dated August 30, 2004, from [REDACTED] stating that he met the applicant in 1984 in Los Angeles, California, and that the applicant worked as a jewelry repairman at his store in Buena Park, California, from 1984 to 1988.
4. An affidavit, dated March 23, 2004, from [REDACTED] stating that he employed the applicant as a trainee presser in his dry-cleaning business in 1982.
5. An affidavit, dated March 25, 2004, from [REDACTED], stating that he has known the applicant since 1984 when he met the applicant through a friend.
6. An affidavit, dated March 23, 2004, from [REDACTED], stating that he had met and seen the applicant at community and recreation activities in Los Angeles, California, from time to time between the years of 1982 and 1988.
7. A letter, undated and not notarized, from [REDACTED] stating that the applicant had been a family acquaintance and close friend for the last 25 years. Mr. [REDACTED] states that he has been living in the Chicago area since early 1982 and when he arrived in the United States, he “learned from friends” in Chicago that the applicant had been residing in the Los Angeles area since 1981. Mr. [REDACTED] further states that he has been in touch with the applicant on a regular basis since at least 1982, and that when the applicant moved to Chicago in 1990, he stayed with [REDACTED] briefly before moving into his own apartment.

The employment affidavits, Nos. 3 and 4, above, fail to meet the regulatory requirements, previously identified, set forth under 8 C.F.R. § 245a.2(d)(3)(i). Specifically, they do not provide the applicant’s address at the time of employment, identify the exact period(s) of employment, and show periods of layoff, if any. The affidavits also do not declare whether the information was taken from company records, 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. As such, they carry little evidentiary weight.

While not required, Nos. 5 through 7, above, are not accompanied by proof of the affiants’ identifications or any evidence that they actually resided in the same area as the applicant during the dates they claim to have known him. In No. 5, the affiant does not indicate his specific relationship with the applicant and does not state how often and under what circumstances he had contact with him. No. 6 generally lacks details and is unclear as to what basis the affiant claims to have direct and personal knowledge of the events and circumstances of the applicant’s arrival and continuous residence in the United States. Furthermore, in No. 7, [REDACTED] states that he has only third-hand knowledge of the applicant’s presence in the United States prior to January 1, 1982. As such, these statements can be afforded minimal weight as evidence of the applicant’s continuous unlawful residence and presence in the United States throughout the requisite time period.

In a Notice of Intent to Deny (NOID), dated January 9, 2006, the district director determined that the applicant had failed to provide sufficient evidence that he had continuously resided in the United States in unlawful status from prior to January 1, 1982, through May 4, 1988. The applicant was provided 30 days in which to submit evidence to overcome the reasons for denial of the application. The record reflects that the applicant did not respond to the NOID.

In a Notice of Denial (NOD), dated June 24, 2006, the district director denied the application on the grounds stated in the NOID. The applicant, through counsel, filed a timely appeal from the district director's decision on July 24, 2006.

On appeal, counsel submits a brief concluding that the applicant provided competent, credible and legally sufficient evidence of his residence in the United States since before January 1, 1982, and that the district director's denial of the application does not fairly appraise the evidence submitted or make any showing that any effort was made to contact the affiants or assess their credibility and consistency. In support of the appeal, counsel resubmits documentation previously contained in the record and provides documentation establishing the existence of the businesses of [REDACTED] and [REDACTED] (the employers in Nos. 3 and 4, above). However, proof of the existence of these businesses does not ameliorate the deficiencies previously noted in the affidavits provided by the employers.

The issue in this proceeding is whether the applicant has established that he continuously resided in the United States in unlawful status from prior to January 1, 1982, through May 4, 1988.

Although the applicant has submitted letters and affidavits in support of his application, he has not provided any of the contemporaneous documents provided for in 8 C.F.R. § 245a.2(d)(3) as evidence of his residence in the United States during the requisite time period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality.

Pursuant to 8 C.F.R. § 245a.2(d)(5), 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 minimal probative value, it is concluded that he has failed to establish his continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency in the evidence provided, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he

entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). 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.