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U.S. Citizenship
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FILE:



Office: NEW YORK, NEW YORK

Date:

MAY 30 2008

MSC 02 253 61021

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 forwarded to the Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the late legalization provisions of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director), New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director also indicated that the applicant failed to provide sufficient, credible evidence that he was continuously present in the United States during the statutory period beginning on November 6, 1986 and ending on May 4, 1988.

On appeal, counsel asserted that the applicant did maintain continuous unlawful residence and physical presence in the United States during the statutory periods.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous, unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

See also 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that 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.

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.

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 absence of contemporaneous evidence is not necessarily fatal to the applicant’s claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

Documentary evidence may be in the format prescribed by CIS regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and “state the employer’s willingness to come forward and give testimony if requested.” *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a “relevant document” under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

At issue in this proceeding is whether the applicant has submitted credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The record indicates that on or near October 18, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On June 10, 2002, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains documents that relate to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, including:

1. The Form I-687 which the applicant signed under penalty of perjury on October 18, 1990. At item 35 of this form, the applicant stated that from June 13, 1987 through August 15, 1987 he was absent from the United States and in Mexico visiting a friend. The applicant indicated on this form that this was his only absence from the United States during the statutory period.
2. The Form for Determination of Class Membership in *CSS v. Meese* which the applicant signed under penalty of perjury on August 13, 1990. On this form, the applicant stated that he was absent from the United States from June 13, 1987 through August 15, 1987 and in Mexico for a visit. The applicant indicated on this form that this was his only absence from the United States during the statutory period.
3. A copy of the applicant's marriage certificate which states that his marriage to ██████████ took place in Sharifabad, Misrishah – Lahore, Pakistan on April 10, 1983, and that the marriage was registered on April 15, 1983 in Pakistan.
4. The Form I-485 which the applicant signed under penalty of perjury on May 14, 2002. At Part 3, item B of this form, the applicant stated that on November 24, 1984 his son, ██████████, was born in Pakistan and on April 1, 1986 his daughter, ██████████ was born in Pakistan.
5. The record of the applicant's sworn statement dated November 12, 1996 taken before an officer of the Immigration and Naturalization Service in which the applicant testified that in 1983 he married in Pakistan. He also testified that he had children born in Pakistan on November 24, 1984 and April 1, 1986 as well as a child born in Pakistan on March 15, 1979 from a previous marriage. He also testified that on August 4, 1990 his fourth child was born in the United States.
6. The notes taken at the applicant's April 7, 2004 LIFE legalization interview at which the applicant testified that he had one child and that this child is a U.S. citizen. He also testified that he had one absence from the United States during the statutory period: June 13, 1987 through July 15, 1987.

On September 20, 2006, the director issued a Notice of Intent to Deny (NOID) which indicated that the applicant had failed to demonstrate continuous residence in the United States during the statutory period. In the NOID, the director pointed out discrepancies in the record relating to the applicant's claim that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988. For example, the director stated that at the April 7, 2004 LIFE legalization interview the applicant testified that he

had exited the United States only one time during the statutory period and that was in June 1987. However, evidence in the record indicates that the applicant married in Pakistan on April 10, 1983 and that he had a child born in Pakistan on November 24, 1984 and April 11, 1986. The director also noted that at the April 7, 2004 LIFE legalization interview the applicant indicated that he had only one child and that this child was born in the United States.²

The director indicated that because of these contradictions in the record she concluded that the applicant had failed to establish continuous residence in the United States throughout the statutory period. For these reasons, the director intended to deny the application.

On rebuttal, counsel asserted that contrary to statements made in the NOID, the applicant was not asked about his children or his marriage during the LIFE legalization interview. Counsel asserted that the applicant was married to his wife in Pakistan by telephone, and that he did not return to Pakistan in 1983 to be married. In addition, counsel stated that the applicant did not assert that he had only one child at the LIFE legalization interview. Counsel asserted that the applicant had listed his children, including the two children born in Pakistan during the statutory period, on the Form I-687 submitted in 1990.³ Counsel asserted that these two children were conceived in the United States, but that the applicant's wife had returned to Pakistan to give birth to them. Counsel indicated that his wife did this because, in Pakistan, she had family members to care for her during the final stages of the pregnancy.

Counsel indicated that the applicant's wife traveled to the United States on three occasions. Her first visit was from November 1993 through March 1994. Counsel indicated that the affidavit of [REDACTED] corroborated this in that [REDACTED] attested that during December 1993 he interviewed the applicant's wife to work as his housekeeper in Manhattan, New York. Counsel also stated that after giving birth in Pakistan, the applicant's wife returned to the United States in April 1995. Counsel indicated that the statement of [REDACTED] corroborates this in that the doctor verified having treated the applicant's wife on June 16th, 1995 in Manhattan, New York. The applicant's wife returned again to Pakistan to give birth in August 1985, according to counsel.

This office notes that, on appeal, counsel requested that she be allowed to correct the dates above to read that the applicant's wife first resided in the United States from November 1983 through March 1984 and that her next stay in the United States was from April 1985 through August 1985.

² The director also indicated that the applicant had testified that his wife had never been to the United States, Canada or Mexico. On rebuttal and on appeal, the applicant through counsel denied having said this. There is no evidence in the record that the applicant ever stated this. Moreover, the record indicates that the applicant's wife gave birth to their son, [REDACTED], in the United States on August 4, 1990. Thus, this point in the NOID is withdrawn.

³ The AAO notes that the applicant listed three children on the Form I-687 which he signed during October 1990. He also indicated that all three were born in Pakistan. He failed to provide the dates of birth of these children where requested on that form. He also failed to list his child born on August 4, 1990 in the United States. On the Form I-485, the applicant listed three children and included their places and dates of birth. On this form, he did include his child born in 1990 in the United States, but he failed to list his eldest child from a previous marriage who apparently was born in Pakistan on March 15, 1979.

On rebuttal, counsel continued by asserting that the applicant's wife returned again to the United States in August 1989. Counsel also indicated that the reason the applicant was not able to provide contemporaneous evidence of having been in the United States during the statutory period related to his having been burglarized in 1992 at which time many of his documents were taken or destroyed.

Counsel concluded that the various affidavits, statements and other evidence in the record taken as a whole demonstrate that the applicant did reside continuously in the United States and was continuously physically present in this country during the statutory periods.

On October 20, 2006, the director denied the application based on the reasons set out in the NOID. She pointed out that the applicant had testified to having married in 1983 in Pakistan. He had not indicated that he married while in the United States speaking on the telephone to individuals in Pakistan, as suggested by counsel on rebuttal. The director indicated that the applicant had not overcome the many discrepancies in the evidence set forth in the NOID.

On appeal, counsel asserted that the applicant had established through affidavits and statements in the record that he had resided continuously in the United States throughout the statutory period.

The record includes a copy of the applicant's marriage certificate that indicates that the applicant was married in Pakistan during April 1983. During 1996, the applicant also testified that he was married in Pakistan during 1983. On the Form for Determination of Class Membership in *CSS v. Meese*, the applicant stated that he first entered the United States during July 1979 and that he did not exit until June 13, 1987. On this form, he specified that he visited Mexico from June 13, 1987 through August 15, 1987, more than 45 days. On the Form I-687, the applicant stated that he had only one absence from the United States during the statutory period, and that this absence began June 13, 1987 and ended August 15, 1987. At the April 7, 2004, LIFE legalization interview the applicant stated that his only absence from the United States during the statutory period was from June 13, 1987 through July 15, 1987.

These discrepancies in the record cast serious doubt on the authenticity of all the evidence submitted. This in turn casts doubt on the applicant's claim that he was never absent from the United States for more than 45 days during a single absence, and that he otherwise resided continuously in the United States from a date prior to January 1, 1982 through May 4, 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that he resided continuously in the United States during the statutory period.

The applicant failed to provide any contemporaneous evidence that might be considered independent, objective evidence of his having resided in the United States from a date prior to January 1, 1982 and throughout the statutory period.

The AAO also finds that the various statements and affidavits in the record which purport to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States in an unlawful status from a date prior to January 1, 1982 through May 4, 1988, and that these documents do not have probative value in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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