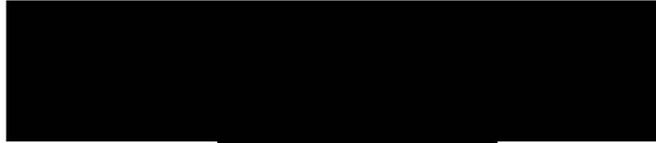


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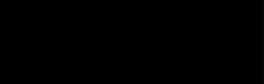
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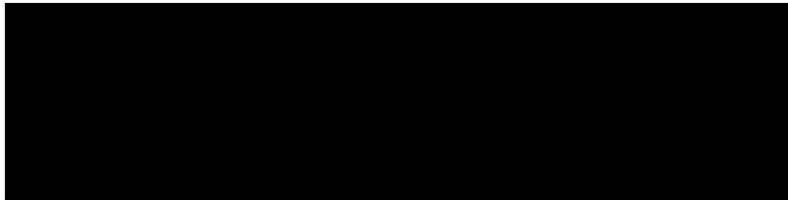
IN RE: Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemahn".

Robert P. Wiemahn, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in Newark, New Jersey. The applicant filed an appeal with the district office, which forwarded the matter to the Administrative Appeals Office (AAO). The AAO will withdraw the director's decision, and remand the application for further consideration and action.

The director denied the application on the ground of abandonment, stating that the applicant failed to appear for fingerprinting as scheduled on November 30, 2005, and did not request that the appointment be rescheduled.

The applicant, a native of Pakistan who claims to have lived in the United States since May 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on December 7, 2001.

On September 25, 2006, the director issued a decision denying the application on the ground of abandonment, in accordance with 8 C.F.R. § 103.2(b)(13), which provides that:

[I]f an individual requested to appear . . . for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the . . . interview, or the applicant . . . has not withdrawn the application . . . the application . . . shall be considered abandoned and, accordingly, shall be denied.

According to the director, a scheduling notice was sent to the applicant at his last known address on November 8, 2005, advising him to appear for fingerprinting on November 30, 2005, but the applicant did not appear on that date and did not request that the appointment be rescheduled.

The regulation at 8 C.F.R. § 103.2(b)(15) provides generally that “[a] denial due to abandonment may not be appealed, though an applicant may file a motion to reopen under 8 C.F.R. § 103.5.” Under the LIFE Act applicants have no such motion rights. *See* 8 C.F.R. § 245a.20(c). But the regulation does give “the Service director who denied the application” the authority to “reopen and reconsider any adverse decision *sua sponte*.” *See id.*

On October 23, 2006, the applicant filed a Form I-290B, Notice of Appeal, at the district office, which was subsequently forwarded to the AAO. In a letter accompanying the Form I-290B counsel asserted that the applicant never received the appointment notice dated November 8, 2005, which was inexplicable in counsel's view because the applicant's address had not recently changed and was known to the district office. Counsel also pointed out that the applicant was subsequently interviewed at the district office on June 7, 2006, was given another appointment notice with his correct address, and appeared as scheduled for fingerprinting on August 10, 2006. Since biometric processing is now complete, counsel requests that the application be reopened and adjudicated on the merits.

A review of the record confirms that the scheduling notice of November 8, 2005, cited in the director's decision, was mailed to an old address which appeared on the applicant's LIFE Act application in 2001. The applicant's address had subsequently changed, and file records show that the applicant's new address was known to Citizenship and Immigration Services (CIS) at the time of the scheduling notice of November 8, 2005. Based on the documentation of record, therefore, the AAO is persuaded that the applicant did not receive notice from the district office of the fingerprinting appointment scheduled for November 30, 2005.

Accordingly, the denial of the application on the ground of abandonment was improper, and will be withdrawn. The matter will be remanded to the director for further consideration and action, in accordance with the authority invested in the director under 8 C.F.R. § 245a.20(c) to "reopen and reconsider any adverse decision *sua sponte*."

Consistent with its plenary power under 5 U.S.C. § 557(b) to review each appeal on a *de novo* basis, the AAO will also review the evidence of record relating to the applicant's claim of continuous unlawful residence and physical presence in the United States during the requisite periods for legalization under the LIFE Act.

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 and been physically present 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 initial evidence of the applicant’s residence in the United States during the 1980s was submitted with a Form I-687 (application for temporary resident status) that was filed by the applicant in Miami, Florida, on June 21, 1990, in connection with his application for class membership in the “CSS” or “LULAC” legalization class action lawsuit. As evidence of his residence and physical presence in the United States between May 1981, the month he claims to have entered the country, and May 4, 1988, the applicant submitted the following documents:

- An affidavit by [REDACTED] a resident of Fort Pierce, Florida, dated June 20, 1990, stating that he met the applicant in 1981 and knew that he departed the United States “for unknown reasons” in July 1987, returning in August 1987.

An affidavit by [REDACTED], a resident of Fort Pierce, Florida, dated June 20, 1990, stating that he met the applicant in February 1984 and has personal knowledge that the applicant resided in Jersey City, New Jersey, from May 1981 to November 1982; in Fort Lauderdale, Florida, from November 1982 to October 1987; and in Fort Pierce, Florida, from October 1987 to the present (1990).

- An affidavit by [REDACTED], a resident of Fort Pierce, Florida, dated June 20, 1990, stating that he met the applicant in a restaurant in 1983 and continued to see the applicant at the restaurant several times a week, as well as at other places, until 1987.
- An affidavit by [REDACTED], of unstated address, on the letterhead of “S and J Window Cleaning,” dated June 20, 1990, stating that the applicant worked with him as a laborer from November 1987 to May 1988, averaging four days a week.

An affidavit by [REDACTED] a resident of Jersey City, New Jersey, dated July 5, 1990, stating that he had personal knowledge that the applicant resided at [REDACTED] in Jersey City, from May 1981 to November 1982.

An affidavit by [REDACTED], a resident of Florida, dated June 28, 1990, stating that the applicant resided with him at [REDACTED], in Fort Lauderdale, Florida, from November 1982 to November 1987.

- An affidavit by [REDACTED], the owner of rental property at [REDACTED] in Fort Pierce, Florida, dated June 28, 1990, stating that the applicant had been a tenant at that address from October 1987 to date.
- Three sworn statements from [REDACTED], and [REDACTED] all residents of Fort Pierce, Florida, dated September 7, 1990, each stating that they had known the applicant since 1987, and the latter two of whom state that he resided during that time (1987-1990) at [REDACTED] in Fort Pierce.

Assorted receipts for merchandise, services, and rental payments, dated between 1981 and 1988, which contain varying amounts of information regarding the name and address of the customer/payor, and the identity of the business entity or individual receiving payment.

After the applicant's interview for LIFE legalization on November 5, 2002, the following additional documents were submitted as evidence of the applicant's residence and physical presence in the United States during the years 1981-1988:

A sworn statement by [REDACTED], a resident of Jersey City, New Jersey, that the applicant has been living in the United States since 1981.

A notarized statement by [REDACTED] a resident of Jersey City, that the applicant came to the United States in 1981 and shared an apartment with his family at [REDACTED], in Jersey City, for over a year.

In adjudicating the application for permanent resident status (Form I-485) on remand, the director must take the documentation cited above into consideration in determining whether the applicant meets the requirement of continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The director shall issue a new decision containing specific findings which, if the application is denied, will afford the applicant the opportunity to present a meaningful appeal.

ORDER: The decision dated September 25, 2006 is withdrawn. The application is remanded to the director for the issuance of a new decision. If the decision is adverse to the applicant, it shall be certified to the AAO for review.