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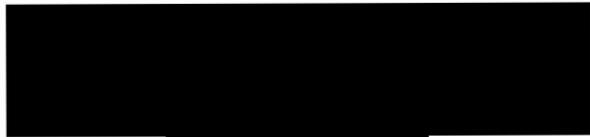
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 01 328 60204

Office: NEW YORK

Date: SEP 24 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:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On October 3, 2006, the District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit credible documents to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988. The director noted that while the applicant testified that he had not departed the United States since his initial entry in 1981, the applicant's passport was issued to him in Pakistan in 1982 and his Pakistani national identification card was issued to him in Pakistan on July 18, 1983.

On appeal, counsel asserts that the director failed to consider the documentary evidence the applicant submitted, which demonstrated that the applicant has been residing continuously in the United States since 1982. Counsel asserts that the applicant is unable to provide documentation of his initial stay since he moved from Chicago to New York in 1987 and the applicant has no relatives or friends in Chicago who would verify his arrival there in 1982. Counsel asserts that it is not necessary to live in Pakistan to obtain a national identity card from Pakistan.

An applicant for permanent resident status under section 1104 of the LIFE Act 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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 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 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). See 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden, establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The record reflects that on August 24, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On July 21, 2003, the applicant appeared for an interview based on the application.

The applicant has provided the following evidence relating to the requisite period:

Contemporaneous evidence

- The applicant's Pakistani passport, issued in Karachi, Pakistan, in 1982;
- The applicant's Pakistani national identity card, issued to him, in Karachi, Pakistan, on July 18, 1983;
- A merchandise receipt dated May 6, 1982, from Bondy Export Co, in New York City. The receipt contains the applicant's name but does not list his address and

can therefore be given minimal weight as evidence of his continuous residence in the United States during the required statutory period; and,

- A merchandise receipt dated March 20, 1988, from [REDACTED] This document can be given no evidentiary weight as it does not contain the applicant's name or address, does not indicate where [REDACTED] is located, and does not otherwise establish the applicant's continuous residence in the United States during the required statutory period.

Letters and affidavits

- A letter dated January 25, 2003, [REDACTED] states that he has been living in New York since April 1983. He states that he met the applicant a year after he moved to New York, and that they have kept in touch ever since then. He states that he has met the applicant's family and they have become close. He states that he attended the applicant's wedding in 2000 and that he was delighted when the applicant had a son. He states that the applicant is a very good friend and devoted family member who always helps others with a smile. This letter can be given minimal evidentiary weight as to the applicant's continuous residence. [REDACTED] does not provide a specific date when, where or under what circumstances he met the applicant and does not provide any specific details of the circumstances of the applicant's residence in the United States during the statutory period. The details he does provide are of events that occurred after 1988;

An undated, unnotarized affidavit, signed by [REDACTED] the applicant's brother, and a doctor from [REDACTED] [REDACTED] states that the applicant has resided in the United States since December 1981 and that he is a very hardworking person. He states that the applicant is a law-abiding and kind person who is very liked by his friends and colleagues;

- Two affidavits both sworn to on January 14, 2003, from [REDACTED] the applicant's brother, and [REDACTED] the applicant's sister. Ms. [REDACTED] states that she is a citizen and asserts that the applicant lived with her from 1981 to 1984 at [REDACTED] states that he is a U.S. citizen and asserts that the applicant lived with him from 1984 to 1989 at [REDACTED] in Brooklyn, New York. Although this information is consistent with information provided on the applicant's Form I-687, it contradicts counsel's assertion on appeal that the applicant lived in Chicago from 1982 to 1987. Both siblings state that the applicant left Pakistan for the United States in 1981 and that he has been living in the United States for over 20 years; and,

- An "Affidavit" form sworn to on April 9, 1990. The form, signed by [REDACTED] the applicant's best friend, lists the applicant's address as [REDACTED]. [REDACTED] added: "We both originally hail from Pakistan where I had met him for the first time by my friend." [REDACTED] asserts that the applicant left the United States in November 1987 and returned in December 1987. This affidavit, while confirming the applicant's absence in 1987, has limited relevance as evidence of his residence in the United States during the requisite period.

For the reasons noted above, these letters and affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. Furthermore, while the applicant has submitted numerous affidavits in support of his application, he the only credible, contemporaneous evidence provided that is dated during the requisite period, indicates that the applicant was in Pakistan in 1982 and 1983.

The AAO notes that the affidavits the applicant submitted can be given minimal evidentiary weight for the additional reason that they contradict each other and information contained in the record. On appeal counsel asserts that the applicant is unable to provide documents of his initial stay in the United States because he moved from Chicago to New York in 1987 and has no friends or relatives who could verify his residence and arrival in Chicago in 1982. As noted above, the record, in fact, contains an affidavit from the applicant's best friend indicating that the applicant was living in Chicago in 1990. This affidavit contradicts the information the applicant provided about his residence on his Form I-687 and information provided by his siblings, who assert that the applicant was living with them during the same time period. 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 petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not explained these inconsistencies and has not submitted evidence pointing to where the truth lies.

The record of proceedings contains other documents, including the applicant's marriage license, indicating that he married [REDACTED] on March 10, 2000, in Jericho, New York. These documents all indicate physical presence after May 4, 1988, and do not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in December 1981, and to have resided for the duration of the requisite period in Chicago and New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), 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 on affidavits, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.