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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

L 2

FILE: [redacted] Office: LOS ANGELES Date: JUN 30 2008

MSC 02 247 63803

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: Self-represented

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.

for 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 Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

At the time of the appeal, in April 2006, a Notice of Entry of Appearance as Attorney or Representative (Form G-28) was filed by the attorney Garish Sarin. In a subsequent letter to the AAO on June 27, 2007, the applicant stated that he revoked the right of [redacted] to represent him as legal counsel in all immigration matters, that he would represent himself or secure another attorney in the future, and that any correspondence should henceforth be sent to his home address. There is no record of [redacted] ever having represented the applicant in this proceeding, or any other immigration proceeding. The AAO interprets the applicant's letter, however, as expressing his intent not to be represented by anyone in the current appeal.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has lived in the United States since 1981, and submits some additional documentation in support of that claim.

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).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: "An alien shall be regarded as having resided continuously in the United States if *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." (Emphases added.)

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 March 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 4, 2002.

On February 1, 2006, the director issued a Notice of Intent to Deny (NOID), stating that there was no documentation in the record to support the applicant's claim of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

No further evidence was submitted in response to the NOID. On March 29, 2006, therefore, the director denied the application for the reasons stated in the NOID.

On appeal the applicant reiterates his claim to have resided continuously in the United States during the requisite period for LIFE legalization, and submits a notarized statement from [redacted], a resident of Simi Valley, California, dated April 11, 2006, declaring that he met the applicant in November or December 1981 and that they were running partners for the next ten years, until [redacted] quit running in 1991.

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

The applicant has no contemporary documentation from the 1980s demonstrating that he resided in the United States at that time, and the notarized statement from [redacted] provides virtually no information about the applicant's life in the United States during the years 1981 to 1988. Mr. [redacted] does not indicate where the applicant was living during the years they ran together, or where he worked. Nor has [redacted] submitted any supporting documents – such as photographs, letters, and the like – showing his relationship to the applicant during the 1980s. Considering the paucity of information he provides, [redacted]'s statement carries little evidentiary weight. It certainly does not represent persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988 – the requisite period for LIFE legalization.

Even if the AAO accepted the applicant's claim of continuous residence in the United States as of March 1981, the applicant has acknowledged at least one absence from the United States of more than 45 days during the statutory period for LIFE legalization. In his prior applications for status as a temporary resident (Form I-687) and for class membership in the CSS v. Meese class action lawsuit, [1] prepared conjointly in 1990, the applicant stated that he was absent from the United States on a family trip to Pakistan from May 5 to July 13, 1987 – a period of 69 days. An absence of that duration would have exceeded the 45-day maximum for a single absence prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1), and interrupted the applicant's continuous residence in the United States, unless he could show that a timely return to the United States could not be accomplished due to emergent reasons.

While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being." The applicant has provided no evidence, however, that unexpected events or any kind of emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1) and *Matter of C-*, prevented his return to the United States from Pakistan within the 45-day period allowed in the regulation. Thus, the trip the applicant claims to have made to Pakistan in 1987 would have interrupted his continuous residence in the United States.

For the reasons discussed above, the applicant has failed to establish that he 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 and 8 C.F.R. § 245a.15(c)(1). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

---

[1] *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)

The appeal will be dismissed, and the application denied.

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