

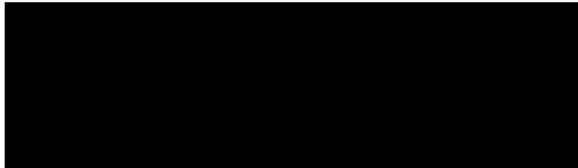
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC 02 162 65512

Office: CHICAGO

Date: OCT 22 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On February 2, 2007, the Director, Chicago, 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 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 the applicant submitted. The director noted that the two affidavits the applicant submitted could not be verified because the affiants both lived in Pakistan. The director stated that no response had been received to a Notice of Intent to Deny (NOID) sent on April 8, 2005.

Counsel for the applicant asserts that a response to the NOID was submitted along with two additional affidavits.

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.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)."

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 March 11, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On May 10, 2004, the applicant appeared for an interview based on the application.

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

- Two fill-in-the-blank forms dated in May 2005. The form, signed by [REDACTED] and [REDACTED], allows the affiant to fill in how long he or she has known the applicant and under what circumstances. Mr. [REDACTED] indicates that he has known the applicant since 1982 and that the applicant is his "friend." Mr. [REDACTED] indicates that he has known the applicant for 23 years, and adds: "Through my being a police officer and his being mgr./owner of retail establishments." These

affidavits, prepared on duplicate fill-in-the-blank forms, contain minimal details regarding any relationship with the applicant during the requisite period and fail to even state when or where the affiants and the applicant met. They fail to include the applicant's addresses, fail to indicate any personal knowledge of the applicant's claimed entry to the United States during that year, and fail to provide any details regarding the circumstances of the applicant's residence in the United States during the requisite period;

- A letter dated October 11, 2003, from [REDACTED], which states that the applicant worked on his crew as a helper from January 15, 1981 to March 15, 1983, and was paid \$170 during this period. Mr. [REDACTED] asserts that from March 16, 1983, to November 1989, he worked as a presser and was paid \$200 every week. This letter does not meet regulatory standards. Specifically, the employer failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the employer failed to 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 [REDACTED] states that the applicant was a helper and then a presser, he does not list the applicant's duties with the company. Therefore, this letter can be accorded only minimal weight as evidence of residence during the statutory period; and,
- An "affidavit" form dated April 9, 1990, from [REDACTED] Mr. [REDACTED] fills in various blanks indicating that he has been acquainted with the applicant for ten years as a friend. While he indicates that he "has personal knowledge that [the applicant] has resided in the United States of America since 1981," he fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence including his addresses. This letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

For the reasons noted above, these letters 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 has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period.

The record of proceedings contains other documents, including envelopes date stamped in 1990, the birth certificate of the applicant's U.S. citizen child, born on October 4, 2001, in Chicago,

Illinois; a letter from Citibank indicating the applicant opened two separate accounts on December 24, 1991, and December 6, 1994; a business license approved on November 23, 1999, 2004 tax records, and a residential lease dated October 23, 1995. 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 1981, and to have resided for the duration of the requisite period in Texas 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 letters and affidavits alone, 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.