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FILE: MSC 02 060 61851

Office: CHICAGO

Date: SEP 05 2008

IN RE: Applicant:



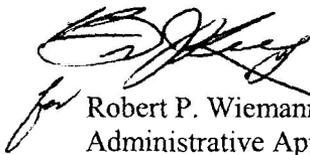
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.

  
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 Chicago, Illinois. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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 counsel asserts that the director did not properly consider the evidence in the record and requests that the case be given favorable review.

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 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, who was born in Pakistan on November 21, 1969 and 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 November 29, 2001. At that time the record included the following evidence of the applicant's residence in the years 1981-1988, all of which had been filed with a Form I-687 (application for temporary resident status) in 1991:

- An affidavit by [REDACTED] the owner of India Imports in Irving, Texas, dated Oct. 15, 1990, stating that the applicant was employed at the store from January 1982 to February 1985 and paid \$3.75/hour.
- An affidavit by [REDACTED], a resident of Chicago, dated January 28, 1991, stating that he has personal knowledge, based on his friendship with the applicant whom he met in church, that the applicant resided at the following addresses during the 1980s: (1) November 1981 to March 1985, at [REDACTED], in Irving, Texas; (2) April 1985 to March 1986, at [REDACTED], in Chicago, Illinois; (3) March 1986 to March 1987, at [REDACTED], in Chicago; (4) April 1987 to February 1989, at [REDACTED], in Chicago.
- An affidavit by [REDACTED], business manager of The Cedars Apartments in Irving, Texas, dated December 13, 1990, stating that the applicant was a co-tenant with two others of the residential property at [REDACTED] in Irving, from November 12, 1981 to March 31, 1985, at a monthly rent of \$275.00.

An affidavit by [REDACTED] a resident of Chicago, Illinois, dated January 27, 1991, stating that the applicant resided with him in his apartment at [REDACTED] in Chicago, from April 1985 to March 1986, and at [REDACTED] in Chicago, from March 1986 to March 1987.

- An affidavit by [REDACTED] a resident of Chicago, dated January 29, 1991, stating that he and the applicant shared an apartment at [REDACTED], in Chicago, from April 1987 to February 1989.

On January 13, 2003, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record, including the affidavits dating from 1990 and 1991, did not establish by a

preponderance of the evidence that the applicant had resided continuously in the United States from before January 1, 1982 through May 4, 1988, and been continuously physically present in the country from November 6, 1986 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

On February 12, 2003, the applicant sent a letter to the director requesting additional time to secure some documentation, including medical records and personal affidavits about his home schooling. When no further correspondence was received from the applicant, the director proceeded to deny the application for LIFE legalization on June 27, 2003. In the Notice of Decision the director noted that more than 90 days had passed since the applicant's request for additional time, and that the evidence of record still failed to establish the applicant's continuous unlawful residence in the United States during the requisite time period from before January 1, 1982 through May 4, 1988.

On appeal counsel contends that the applicant was never informed that his request for an extension had been granted, and would have complied with the request for additional evidence if he had been so informed. Counsel also asserts that the director should have given greater weight to the affidavits submitted by the applicant.

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

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite time period for LIFE legalization. For someone claiming to have lived in the United States since May 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

In the appeal brief counsel stated that the applicant would have complied with the request for additional evidence had he been informed that his extension request was granted. The applicant has had five years to submit additional evidence on appeal, however, and no further evidence has been submitted. In his letter to the director in February 2003 the applicant referred specifically to his search for medical records and home schooling affidavits. No such documents have been submitted in support of the appeal.

With regard to the affidavit evidence in the record, the one from the owner of India Imports stating that the applicant worked for him during the years 1982-1985 does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address at the time of employment, did not describe his duties, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. In view of these multiple infirmities, the employment affidavit has little

evidentiary weight. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

As for the other affidavits from individuals who claim to have known and/or resided with the applicant during the 1980s, they provide almost no information about his life in the United States, how each of the affiants met him, and their interaction with the applicant over the years. With one exception, from The Cedars Apartments, the affidavits are all fill-in-the-blank formats with little personal input by the affiants. The information could just as easily been supplied by the applicant. Furthermore, none of the affidavits was accompanied by any evidence from the authors – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits in the record have limited probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.<sup>1</sup>

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and 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, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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

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<sup>1</sup> The applicant submitted three additional affidavits – identical in format and similar both in their substance and in their infirmities to those filed in the current proceeding – in support of an application for temporary resident status (Form I-687) filed on November 15, 2004 [MSC 05 046 12237]. That application was denied on June 27, 2006, and a late-filed appeal was rejected on December 6, 2006.