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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 183 62870

Office: GARDEN CITY

Date: **MAY 06 2009**

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.

John F. Grissom, Acting 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 Garden City, New York. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that he entered the United States before January 1, 1982, 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 submitted sufficient credible evidence to establish that he meets the continuous residence requirement for LIFE legalization.

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.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

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 July 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 1, 2002.

In a Notice of Intent to Deny (NOID), dated May 24, 2007, the director cited inconsistencies between the applicant’s testimony at his LIFE legalization interview on April 7, 2004, and documentation in the record regarding the applicant’s initial entry into the United States, and his continuous residence in the country, which undermines the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through May, 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant responded and submitted additional affidavits. On July 19, 2007, the director issued a Notice of Decision denying the application on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal, the applicant asserts that he has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for LIFE legalization and submits additional documentation.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through May 4, 1988, consists of the following:

- A letter of employment from [REDACTED], who identified himself as the owner of Jersey Trading Company in Jersey City, New Jersey, stating that the applicant was employed from October 1981 through May 1986, as a cleaning person.
- A letter of employment from [REDACTED] president of Five Stars Corporation in Falls Church, Virginia, dated March 9, 1992, stating that the applicant was employed from February 1988 to the present (1992).
- A letter of employment from [REDACTED] manager of Badar Contractors, Inc. in Alexandria, Virginia, stating that the applicant was employed as a construction supervisor from August 1986 to September 1987.
- A series of notarized letters and affidavits from individuals who claim to have resided with or otherwise known the applicant in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The documents are not probative or credible.

The applicant has provided conflicting information and documentation in support of his application. For example, on the Form I-687 (application for status as a temporary resident) dated March 12, 1992, the applicant indicated that he has four children. The applicant did not state the dates and place of birth of his children. The applicant stated that he traveled from the United States to Pakistan only once – from November to December 1987 – to visit his family. The applicant did not indicate any other trips outside the United States during the 1980s. On the Form I-485 the applicant filed in 2002, the applicant indicated that he has four children and listed their dates of birth as July 1, 1981, December 14, 1984, January 13, 1987, and May 13, 1990. It is noted that all four children were born in Pakistan. There is no evidence in the record that the applicant's wife was residing in the United States during the 1980s, therefore, it is implausible that the applicant's wife could have conceived and given birth to two of the applicant's children in Pakistan at the same time period the

applicant claims he was present and continuously residing in the United States. The applicant has not submitted any objective evidence to explain or justify the conflicting evidence in the record. Therefore, the reliability of the remaining evidence – consisting of affidavits – from individuals who claim to have lived with or otherwise known the applicant in the United States during the 1980's, as well as the letters of employment, is suspect and not credible.

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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The letters of employment in the record, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. The letters are not supplemented by earnings statement, pay stubs or tax records to show that the applicant was actually employed during the periods indicated. For the reasons discussed above, the AAO determines that the employment letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the affidavits in the record from individuals who claim to have resided with, or otherwise known the applicant during the 1980s, they have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provide remarkably little information about the applicant's life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the affidavits have little 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.

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. 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.