

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

L2



FILE:

MSC 03 235 61373

Office: NEW YORK

Date:

OCT 29 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence in support of such claim.

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. Section 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 periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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 since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.* At 80. 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. *Id.*

Even if the director has some doubt as to the truth, if the petitioner 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 petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing his continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on May 2, 1991. At part #32 of this Form I-687 application where applicants were asked to provide information relating to their immediate family, the applicant listed a son [REDACTED] born in Pakistan on August 2, 1980, and a son [REDACTED] born in Pakistan on February 2, 1982.

The record shows that the applicant subsequently submitted in separate proceedings a Form I-485, Application to Register Permanent Residence or Adjust Status, on November 14, 1997 and another Form I-485 adjustment application on November 20, 2001. At part #3B of the Form I-485 adjustment application submitted on November 14, 1997 where applicants were asked to provide information relating to their immediate family, the applicant listed a son [REDACTED] born in Pakistan on February 8, 1981, and a son [REDACTED] born in Pakistan on February 3, 1982. At part #3B of the Form I-485 application submitted on November 20, 2001 where applicants were asked to provide information relating to their immediate family, the applicant listed a son [REDACTED] born in Pakistan on August 2, 1982, and a son [REDACTED] born in Pakistan on March 2, 1984.

Subsequently, the applicant filed his Form I-485 LIFE Act application on May 23, 2003. At part #3B of the Form I-485 LIFE Act application where applicants were asked to provide information relating to their immediate family, the applicant listed a son [REDACTED] born in Pakistan on February 2, 1981, and a son [REDACTED] born in Pakistan on an unspecified day in February 1982.

The fact that the applicant attested to conflicting dates of birth for his sons, [REDACTED] and [REDACTED] on the Form I-687 application, two Form I-485 adjustment applications, and the Form I-485 LIFE Act application raises questions as to the applicant's credibility. This discrepancy between his sons' birthdates and resulting discrepancy between the corresponding dates for the conception of these children also raises questions regarding the applicant's claim that he entered and began to reside in the United States prior to January 1, 1982.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted two affidavits signed by [REDACTED]. In these affidavits, [REDACTED] recounted the applicant's absence from the United States in 1987 and provided a listing of the applicant's residences and employment in this country in the requisite period.

The applicant included two original envelopes postmarked October 25, 1985 and May 1, 1988, as well as an original envelope containing an indiscernible postmark. Regardless, the probative value of these envelopes is limited as the envelopes tend to demonstrate the applicant's residence in the United States after October 1985 without providing any evidence that the applicant resided in this country from prior to January 1, 1982 up until October 1985.

The applicant provided a photocopied New York City Police Department Report which reflected that the applicant reported he had been robbed of a briefcase containing personnel documents, his wallet, and cash at gunpoint at 10:30 P.M., on Thursday, July 22, 1982 in front of [REDACTED] in Astoria, New York. The report reflects that the applicant reported this incident to the police at 11:00 P.M., on Thursday, July 22, 1982 and that his home phone number was [REDACTED].” However, the probative value of this document is limited in that the police report is a photocopy rather than an original document. “In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.” 8 C.F.R. § 245a.2(d)(6). Further, the credibility of this document is diminished as a review of the Internet site, <http://areacode-info.com>, confirms that the 718 area code was created for use in three of New York City's five counties, Kings (also known as Brooklyn), Queens, and Staten Island, beginning on **September 2, 1984**. Prior to such date all five counties of New York City utilized the 212 area code with two counties, Manhattan and the Bronx, permanently retaining the 212 area code after December 31, 1984. Moreover, the credibility of this document is negated by the fact that the New York City Police Report contains a revision date of “8-91” or August 1991 in the upper left corner. While the applicant attempted to explain these discrepancies by asserting that the police report had been subsequently obtained in 1991 or 1992, he failed to provide any independent evidence to confirm this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant submitted affidavits signed by [REDACTED] and [REDACTED], respectively. While the affiants attested to the applicant's residence in the United States for the period in question or a portion thereof, their testimony was general and vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the required period.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-485 LIFE Act application on December 2, 2005. Although the director noted that an officer of the United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) had contacted an officer at the 114th Precinct of the New York City Police Department in attempt to ascertain the authenticity of the police report cited above, the record does not contain any documentation reflecting the particulars of this verification attempt.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence in support of such claim. Counsel contends that the USCIS officer's attempt to verify the police report was superficial and subjective. Counsel's remarks on appeal regarding the sufficiency of evidence the applicant submitted to demonstrate his residence in this country during the period in question have been considered. However, the majority of the affidavits contained in the record do not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. In addition, the police report cited above is not credible for the reasons stated above and the applicant's attempt to explain the discrepancies contained in this report cannot be considered as reasonable. Moreover, the fact that the applicant has consistently and repeatedly provided conflicting dates of birth for his two sons raises serious questions regarding his claim that he entered and began to reside in the United States prior to January 1, 1982.

The absence of sufficiently detailed and credible supporting documentation, as well as the conflicting and contradictory testimony cited above all seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value and conflicting nature of testimony contained in the record, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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