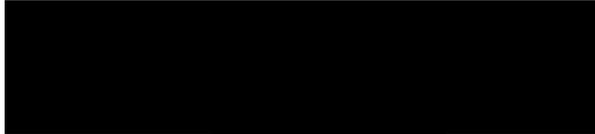


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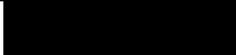


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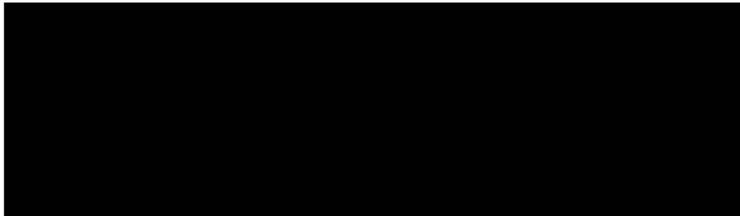
Office: HOUSTON

Date: APR 25 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. 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: The District Director, Houston, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application finding that, due to inconsistencies and contradictions in his verbal testimony, sworn statements, and the documents in the record, the applicant failed to meet his burden of proof to establish that he first entered the United States before January 1, 1982. The director also found that the evidence did not establish the applicant's residency for the period before January 1, 1982, through May 4, 1988.

On appeal, counsel for the applicant explains why the applicant has been known by two different names. Counsel further asserts that there is no evidence supporting the director's assertion that the applicant failed to disclose certain facts.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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 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 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 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 record reflects that on January 28, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On October 29, 2002, the applicant appeared for an interview based on his application.

October 29, 2002, the director requested that the applicant submit an itemized statement of earnings from the Social Security Administration for Social Security number [REDACTED] k. On that same date, the director requested that the applicant submit a current employment letter.

On August 18, 2003, the director issued a Notice of Intent to Deny, (NOID), stating that due to inconsistencies and contradictions in his verbal testimony, sworn statements, and the documents in the record, the applicant failed to meet his burden of proof to establish that he first entered the United States before January 1, 1982. The director noted that the applicant had provided two different names on applications for different immigration benefits. The director also noted that the applicant testified during his interview that since entering the United States in 1980, he had only departed once, to Canada in 1980, and that he had not been back to India since 1980. The director noted that the applicant failed to disclose that he had been married in India in 1987 and that he had entered the United States with a non-immigrant B-2 visitor for pleasure visa on March 9, 1990. The director stated that because the applicant had provided two different names and contradictory information that he had cast doubt on his credibility and identity. The director informed the applicant that he had 30 days from the receipt of the NOID to submit evidence to overcome the director’s intent to deny his application.

In response, the applicant submitted a Social Security Statement dated January 31, 2003, indicating earnings from 1990 through 2001. Counsel explained that the applicant’s father changed his name from [REDACTED] to [REDACTED] after the partition of Pakistan from India and submitted corroborating documents to show that the applicant had been known by both names. Counsel asserted that there was no evidence to support the director’s allegation that the applicant

had failed to disclose certain facts. Counsel asserted that the director erred in speculating that the applicant lied to the consular officer in India to obtain a B-2 visa but did not address why the applicant had not disclosed his entry into the United States on March 9, 1990.

On November 19, 2003, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel for the applicant explains why the applicant has been known by two different names. Counsel further asserts that there is no evidence supporting the director's assertion that the applicant failed to disclose certain facts.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he was continuously physically present in the United States during the requisite period.

The applicant submitted various tax and employment-related documents to support his Form I-485 application. Some of the evidence submitted is either undated or indicates that the applicant resided in the United States after his last entry, at New York City, on March 9 1990, and is not probative of residence before that date. The only evidence that relates to the requisite period is a fill-in-the-blank affidavit from [REDACTED], the applicant's friend. Mr. [REDACTED] stated that he had known the applicant since 1981 and that the applicant made a trip to Canada in July 1987 and returned in August 1987.

This affidavit can be given little evidentiary weight as it is not sufficiently detailed. [REDACTED] did not state that he had knowledge of where the applicant lived at that time. [REDACTED] did not provide detail about how frequently or the circumstances under which he saw or spoke to the applicant. The affidavit does not provide sufficient detail to establish that the applicant resided continuously and was continuously physically present in the United States during the requisite time period.

In addition, the applicant has not resolved the inconsistency the director mentioned between the date the applicant entered the United State with a B-2 visitor's visa on March 9, 1990, and the applicant's testimony that the only time he left the United States after entering in 1980 was to go to Canada in 1987. On appeal, counsel asserts that the director is speculating as to what the applicant told the consular officer in India. Counsel also asserts that there is no evidence that the applicant failed to disclose certain facts and, that if the director possesses such evidence, it should be made available to the applicant so that he may confront the adverse evidence.

First, it is counsel who submits a written explanation of this discrepancy, not the applicant. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Second, the

applicant has not explained why he told the officer at the interview that he had not left the United States except to go to Canada in 1987, but that he had actually been in India in 1987 and 1990. The record of proceeding contains various applications in which the applicant has stated that he last entered the United States in August 1987, including the current Form I-485, a Form I-687 Application for Status as Temporary Resident, and at least three Forms I-765, Applications for Employment Authorization. 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 unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has neither explained the inconsistency nor has he provided independent objective evidence to help resolve the inconsistency.

The record of proceedings contains various other documents, including a Social Security statement indicating earnings from 1990 to 2001; mail dated in 1990; and, a 2001 credit card statement. None of this evidence addresses 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 last entered the United States in August 1988, and to have resided for the duration of the requisite period in Texas. 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.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through December 31, 1997, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is 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.