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U.S. Citizenship  
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Services

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FILE:



Office: NEW YORK

Date: **AUG 26 2008**

MSC 02 157 60205

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: Self-represented

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 New York City. 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 she entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988.

On appeal the applicant asserts that the director's decision was substantively and procedurally defective.

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.)

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 December 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on March 6, 2002. At that time the record included the following evidence of the applicant's residence in the United States during the 1980s, all of which had been filed in 1990:

An affidavit by [REDACTED] a resident of Brooklyn, New York, dated April 17, 1990, stating that he knew the applicant resided at [REDACTED], in Brooklyn from November 1981 to November 1985, and that his relationship to the applicant was that of "main contractor."

- An affidavit by [REDACTED] a resident of Buena Park, California, dated April, 17 1990, stating that he knew the applicant resided at [REDACTED] in Woodside, New York, from December 1985 to January 1990, and that his relationship to the applicant was that of "friend."
- Another affidavit by [REDACTED] dated March 28, 1990, on the letterhead of Indus Construction Company in Brooklyn, New York, stating that the applicant worked for the company as a "helper" from November 1981 to November 1985, was paid \$3.25/hour, and shared an apartment with other company employees at [REDACTED], in Brooklyn.
- A letter envelope addressed to the applicant at [REDACTED], in Brooklyn, from an individual in Pakistan with a postmark date of February 1981.
- An aerogramme addressed to the applicant at [REDACTED] in Woodside, New York, from an individual in Pakistan with a postmark date of May 15, 1986.

At the applicant's interview for LIFE legalization on April 29, 2005 he submitted two more documents, including:

- A receipt from Habib Bank Limited in New York, dated June 18, 1985, confirming a transfer of funds to an account at the National Bank of Pakistan in the City of Sialkot.

A receipt from Najimisons U.S.A. Corp. in New York City, dated December 17, 1986, listing several items of merchandise.

On May 12, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond within the allotted 30 days, whereupon the director denied the application on July 2, 2007 for the reasons stated in the NOID.

The applicant filed a timely appeal, asserting that the director did not properly consider the evidence in the record and that his due process rights were violated because the NOID was sent to the applicant's old address, despite the fact that his new address had been provided to the District Office in 2005, thereby depriving the applicant of the opportunity to respond to the NOID. No further evidence has been submitted on appeal.

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 affidavits from [REDACTED] and [REDACTED] dated April 17, 1990, have minimalist, fill-in-the-blank formats with little personal input by the affiants. The affidavits provide almost no information about the applicant's life in the United States and his interaction with the affiants over the years. Nor do the affiants describe when and how they met the applicant. Furthermore, neither affidavit was accompanied by any documentary evidence from the affiants – 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 foregoing affidavits 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.

The other affidavit from [REDACTED] dated March 28, 1990, claiming that the applicant was employed by Indus Construction Company as a "helper" from November 1981 to November 1985, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not describe the applicant's duties, did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. The letter was not accompanied by any pay statements or tax records documenting the applicant's employment during any part of the four-year period at issue. Due to the infirmities discussed above, the employment affidavit is not persuasive evidence of the applicant's continuous residence in the United States during the years 1981-1985.

As for the letter envelope and the aerogramme, postmarked in February 1981 and May 15, 1986, respectively, the AAO notes that the letter envelope is addressed to the applicant at the apartment in Brooklyn, New York – [REDACTED] – where he does not claim to have resided until nine months later, in November 1981. The applicant's claim to have begun residing at that address in November 1981 goes back to the Form I-687 (application for temporary resident status) he submitted on April 17, 1990, and was echoed in the affidavit prepared that same day by [REDACTED].

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The applicant has not explained why a letter would be sent to him at an address nine months before he claims to have moved in. In view of this unresolved contradiction, the AAO concludes that the postmark of February 1981 is not authentic. Accordingly, the envelope has no evidentiary weight. By extension, the AAO also doubts the authenticity of the aerogramme postmarked in May 1986. Even if the aerogramme is genuine, it would not be persuasive evidence of the applicant's residence in the United States before 1986.

With regard to the 1985 money transfer receipt from Habib Bank Limited in New York and the 1986 merchandise receipt from Najimisons U.S.A. Corp. in New York, the name and address of the customer is illegible or missing on both documents. Thus, neither document has any probative value as evidence of the applicant's residence in the United States during those years.

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.