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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 193 61132

Office: NEW YORK

Date: DEC 15 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 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 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 give due weight to affidavits in the record, and did not properly analyze other evidence submitted by the applicant.

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.”

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 applicant, a native of Pakistan who claims to have resided in the United States since December 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 11, 2002. At that time the record included the following evidence of the applicant's residence in the United States during the 1980s, which had been submitted to the Legalization Office in Buena Park, California, along with a Form I-687 (application for temporary resident status) in April 1990:

An affidavit by [REDACTED] a resident of Astoria, New York, dated February 16, 1990, stating that the applicant stayed in his apartment at [REDACTED] in Astoria, [REDACTED] for a "couple of months" in 1981 and shared the monthly rent of \$260.

- A photocopied apartment lease for the property at [REDACTED] in Astoria, signed by [REDACTED] and a realty agent, for the one-year period of December 1, 1980 to November 30, 1981.
- An affidavit by [REDACTED] (his first name is illegible), a resident of Jackson Heights, New York, dated February 16, 1990, stating that he and the applicant had been working together at a construction company since 1981.

After the filing of the Form I-485 in 2002 the applicant submitted the following additional evidence of his residence in the United States during the 1980s:

- A statement by the director of the Islamic Center of Stockton, California, dated May 25, 2003, indicating that the applicant and a friend visited California in July 1981, stayed with him, and then departed for New York.

On May 9, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the affidavits and other documentation submitted by the applicant lacked sufficient credibility and probative value 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.

In response to the NOID counsel contended that the evidence of record was credible and sufficient to establish the applicant's eligibility for LIFE legalization.

On June 4, 2007, the director issued a Notice of Decision denying the application. The director indicated that the applicant's response to the NOID did not overcome the grounds for denial as described therein.

On appeal counsel asserts that the director did not give proper weight to the affidavits submitted by the applicant, in view of the difficulty of obtaining primary documentation. Counsel also asserts that the director did not explain why he doubted the authenticity of the apartment lease, and failed to consider pages of the applicant's passport showing that he had traveled on an old passport dated March 16, 1980.

The issue in this proceeding is whether the applicant has furnished sufficient probative evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. 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 period for LIFE legalization. For someone claiming to have lived in the United States since December 1980, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven and one-half years through May 4, 1988.

With regard to the affidavits/statements by individuals who claim to have known the applicant during the 1980s, [REDACTED] and the director of the Islamic Center of Stockton only indicate that the applicant stayed with them briefly in 1981, without providing any further information about the applicant during the rest of the 1980s. Thus, these two documents have little or no probative value as evidence of the applicant's continuous residence in the United States from 1981 through May 4, 1988.

In a similar vein, the apartment lease applies only to the one-year period from December 1980 through November 1981. Even if the AAO accepted the document as authentic, overlooked the fact that the applicant was not a party thereto, and gave credence to [REDACTED]'s story that the applicant resided at the same address during part of that year, the apartment lease would still have little or no probative value as evidence of the applicant's continuous residence in the United States from 1981 through May 4, 1988.

The passport pages cited by counsel on appeal do contain a stamp confirming that the applicant traveled on an old passport issued in Rawalpindi, Pakistan, on March 16, 1980. There is no indication in the passport pages as to when and where the applicant traveled in subsequent years, however, and there are no stamps indicating any entries into the United States during the 1980s. Thus, the passport pages have no probative value as evidence of the applicant's residence in the United States from before January 1, 1982 through May 4, 1988.

The only document in the record that purports to place the applicant in the United States during the entire period required for LIFE legalization is the affidavit by ██████████ in 1990, who stated that he and the applicant had worked together for a construction company since 1981. The affidavit is a minimalist, fill-in-the blank document with few details. ██████████ did not indicate where the applicant lived at any time during the 1980s, and did not even identify the construction company that employed them. Nor did ██████████ provide any further information about the applicant's life in the United States and his interaction with the applicant during the 1980s. Moreover, there is no documentation in the record – such as photographs, letters, or the like – demonstrating that a personal relationship existed between ██████████ and the applicant during the 1980s. In view of these substantive deficiencies, the affidavit by ██████████ is not persuasive evidence of the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

Given the lack of probative evidence in the record, the AAO determines that the applicant has failed to establish that he 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