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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

L2

[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO

Date: JUN 18 2008

MSC 02 309 60619

IN RE:

Applicant:

[REDACTED]

PETITION: 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:

[REDACTED]

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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, and that he maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel submits a brief and additional documentation.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The pertinent statutory provision reads as follows:

Section 1104(c)(2)(B)(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 that were most recently in effect before the date of the enactment of this Act shall apply.

“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. Although the term “emergent reason” is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.”

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.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on August 5, 2002. On December 11, 2003, the applicant was interviewed in connection with his application. At the time of interview, the applicant stated that he had traveled to Pakistan from January 18, 1987, to August 14, 1987.¹

On March 22, 2005, the district director issued a Notice of Intent to Deny (NOID) the application because the applicant had failed to establish his continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, and to maintain continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, due to his absence of from the United States for 7 months in 1987 with no evidence of an emergency to explain the length of his trip. The applicant was granted thirty days to respond to the notice. The record reflects that the applicant failed to respond.

On December 14, 2005, the district director denied the application on the basis of the reasons stated in the NOID. The district director’s determination that the applicant had been absent from the United States for seven months in 1987 was based on the applicant’s own testimony at interview.

On appeal, counsel asserts that the applicant had emergent reasons for traveling to Pakistan, as he had received word that his father had a heart attack; that the applicant departed the United States and took care of his father until he died – then returned as soon as he could. In support of the appeal, counsel submits documentation indicating that the applicant’s father, [REDACTED], had an angiogram on January 18, 1986, and was undergoing treatment/taking medications since that date through to the date he died of a heart attack on July 25, 1987.

¹ It is noted that the submitted a Form I-687, Application for Status as a Temporary Resident, in 1990. In an affidavit signed on March 31, 1990, the applicant claimed that he had initially entered the United States without inspection in February 1981, and that he had departed the United States on only one occasion – on January 8, 1987, in order to travel to Pakistan “to visit,” and returned without inspection on August 12, 1987.

Based on the documentation submitted, the applicant's father had an angiogram in January 1986, and died of a heart attack in July 1987. The applicant did not depart the United States until January 1987 – one year after his father had the angiogram and 7 months prior to his father's death. Furthermore, there is a discrepancy noted in the documentation contained in the record regarding the date of death of the applicant's father. In November 1990, the applicant requested permission to temporarily depart the United States with Advance Parole. At that time, the applicant stated that the reason he wished to travel, from December 1990 to February 1991, was due to "death of father." That request was accompanied by an MCI World Message Service cable dispatch, dated November 19, 1990, stating "YOUR FATHER HAS BEEN [sic] DIED PLEASE ARRIVED [sic] AS SOON AS POSSIBLE." Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The applicant's absence from the United States exceeded the 45 day period allowable for a single absence, as well as the 180 day aggregate total for all absences. There is no evidence that the applicant intended to return within 45 days of his departure, or that an emergent reason "which came suddenly into being" delayed or prevented the applicant's return to the United States beyond the 45-day period.

The applicant has failed to establish that he maintained continuous physical presence in the United States during the period from January 1, 1982, through May 4, 1988, and continuous physical presence during the period from November 6, 1986 through May 4, 1988, as required by 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.

It is noted that documentation contained in the record indicates that the applicant was arrested on two occasions (June 3, 1997, and January 24, 1997) in Santa Rosa, California, and charged with Disorderly Conduct: Prostitution, in violation of California Penal Code section 647(B). In any future proceedings before Citizenship and Immigration Services (CIS), the applicant must submit evidence of the final court dispositions of these and any other charges against him.

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