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

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FILE:



Office: CHICAGO

Date:

**MAY 05 2008**

MSC 02 246 65663

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.

  
for 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 Chicago, Illinois. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application on the ground that the applicant failed to demonstrate that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director did not properly review all of the documentary evidence provided by the applicant and thus failed to properly adjudicate the application.

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).

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 India who claims to have lived in the United States continuously since March 1978, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 3, 2002. The applicant asserts that after his initial entrance into the United States he resided at the following addresses from 1978 through the end of the 1980s:

- [REDACTED] in Chicago, Illinois (March - October 1978).
- [REDACTED] in Florida City, Florida (November 1978 - November 1984).
- [REDACTED] in Hialeah, Florida (December 1984 - August 1989).
- [REDACTED] in Chicago, Illinois (September 1989 - February 1990).

The applicant states that his only absence from the United States between January 1, 1982 and May 4, 1988 was a 20-day trip to Pakistan from August 5 to 25, 1987, and that he has resided in Chicago continuously since 1989. In support of his application for LIFE legalization the following documentation was submitted as evidence of the applicant's residence in the United States from the late 1970s through the 1980s:

- A photocopied bank book from Home Federal Savings in Chicago, Illinois, certifying that the applicant had an account at that institution, as trustee for his wife, [REDACTED], that opened on March 7, 1978 and was closed on November 3, 1978. (The original bank book was later submitted.)
- An original letter from the Catering Manager of Holiday Inn, Chicago Downtown, dated November 3, 1978, addressed "To Whom it May Concern" and stating that the applicant had been employed for the past six months as a banquet waiter. A photocopied letter addressed to the applicant and his wife in Florida City, Florida, dated February 15, 1979, from the Muslim Commercial Bank in Karachi, Pakistan, stating that certificates of deposit in the face amount of 10,000 rupees had accrued interest of 3,000 rupees.
- A photocopied letter addressed to the applicant and his wife in Florida City from Habib Bank Limited in Karachi, dated October 22, 1980, stating that their Defence Saving Certificates had been sold for 21,745 rupees.
- An original envelope addressed to the applicant in Florida City from [REDACTED] in Karachi, postmarked December 19, 1980.
- A photocopied letter addressed to the applicant and his wife in Florida City from the Treasurer of M/S. Super Steel in Karachi, dated August 17, 1981, stating that he had sold 200 of their 1,500 shares in the company.

- A photocopied letter addressed to the applicant and his wife in Florida City from a finance and treasury official of Waseem Trading, an iron and steel importing company in Karachi, dated November 10, 1981, confirming that they had purchased shares in the company.
- A photocopied letter addressed to the applicant and his wife in Florida City from an official of Al-Ismailia Co-Operative Housing Society Ltd. in Karachi, dated February 21, 1983, advising that a piece of real property (their former home) in Karachi had been sold for 138,000 rupees.
- A photocopied letter addressed to the applicant's wife in Florida City from a new accounts official of American Express, dated January 5, 1984, denying her request for a credit card.
- An original statement from [REDACTED] of J.C.C. Farms in Florida City, dated November 29, 1984, that the applicant had "rendered services" from November 1978 to November 1984.
- An original letter to the applicant at Indian Fashions in Miami, Florida, from Sohail Enterprises in Karachi, dated July 13, 1985, advising that the designs he had ordered for [REDACTED] and [REDACTED]" should be available in 30-60 days at a cost of \$5,000.
- A photocopied letter from a representative of Indian Fashions in Miami, Florida, dated February 8, 1990, addressed "To Whom it May Concern," and stating that the applicant and his wife were employed as salespersons from December 1984 to August 1989.
- Affidavits from four individuals who claim to have known and resided with the applicant and his wife and two sons over the years at the previously identified addresses in Chicago from March to November 1978 (applicant only), Florida City from November 1978 to November 1984 (applicant and wife), and Chicago again from September 1989 to February 1990 (applicant, wife, and two children), as well as three other affidavits or letters from individuals who claim to have known the applicant in Chicago or Miami during the 1980s.

In a Notice of Intent to Deny (NOID), dated July 21, 2004, the director indicated that the evidence of record was insufficient to establish the applicant's continuous residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence. In response the applicant submitted copies of documents already in the record.

On May 5, 2005, the director denied the application on the ground that the evidence of record – including the bank book from Home Federal Savings in 1978, the employment letters, and the affidavits – failed to establish by a preponderance of the evidence that the applicant was continuously resident in the United States for the requisite time period for legalization under the LIFE Act.

On appeal counsel contends that the director neglected to explain how the specific documents cited in the decision are insufficient to establish the applicant's continuous residence in the United States. Counsel also lists numerous documents in the record that the director failed to mention in the decision, and asserts that it is unclear whether they were taken into consideration. In counsel's view, the documentation of record meets the preponderance of the evidence standard for the purpose of establishing the applicant's continuous residence in the United States during the requisite years for LIFE legalization.

The AAO agrees with counsel that the documentation of record could have been more fully addressed by the director in rendering his decision. The AAO also notes that there is additional documentation relating to the applicant's residence in the United States in a companion file [REDACTED], which includes the following:

- A photocopied bank statement from the Muslim Commercial Bank Limited in Karachi, Pakistan, dated April 1, 1979, of the joint account of the applicant and his wife, whose address is identified as [REDACTED] in Florida City, Florida.
- A photocopied bank statement from Habib Bank in Karachi, dated November 2, 1980, addressed to the applicant and his wife in Florida City.
- A photocopied Agreement of Sale, dated February 19, 1983, whereby the applicant and his wife, whose residence is identified as [REDACTED] in Florida City, Florida, sold their apartment in Karachi to a Pakistani national.
- A photocopied letter addressed to the applicant and his wife in Florida City from the Muslim Commercial Bank in Karachi, dated July 23, 1985, advising that their term deposit of 30,000 rupees matured on July 7, 1985.
- Photocopied birth certificates of the applicant's two children, showing they were born in Pakistan on May 7, 1973, and October 2, 1980, respectively.
- Photocopied diplomas from the Chicago Public High Schools showing that the applicant's children graduated from high school in Chicago, Illinois, in 1991 and 2000, respectively.
- A Social Security Statement sent to the applicant in Chicago, dated March 2, 2005, listing his years of taxed Social Security earnings as 1978 and 1990-2004.

According to the applicant, he was paid in cash during his years of employment at J.C.C. Farms (November 1978 to November 1984) and Indian Fashions (December 1984 to August 1989), when he had no taxed Social Security earnings.

While the foregoing documentation represents persuasive evidence of the applicant's residence in the United States during most or all of the years between 1978 and 1985, it cuts off abruptly in mid-1985. After July 1985 there is no further documentation demonstrating that the applicant continued to reside in the United States through May 4, 1988. The only evidence of the applicant's residence in the United States during that time period is later, non-contemporaneous documentation, which includes the following:

- The employment letter from Indian Fashions in Miami, Florida, dated February 8, 1990, stating that the applicant and his wife were employed from December 1984 to August 1989, performing such tasks as greeting customers, helping them choose the right outfits, handling daily bank deposits, and ordering inventory garments from Pakistan and India.
- Three affidavits/letters from: (1) [REDACTED] a resident of Miami, Florida, undated, who claims personal knowledge that the applicant resided in Florida from “December 1984 to present,” (2) [REDACTED], a resident of Skokie, Illinois, prepared in 2003, who states that the applicant and his wife resided in the Miami area during the 1980s, and visited him in Chicago during July 1984, before moving to Chicago in early 1990, and (3) [REDACTED], a resident of Miami, dated August 18, 2004, who states that the applicant resided in Florida from 1982 to 1988 and that they visited often during those years.

The letter from Indian Fashions does not comport with the regulatory requirements for employment letters, as specified 8 C.F.R. § 245a.2(d)(3)(i), because it did not provide the applicant’s address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. Furthermore, the author of the letter, [REDACTED], did not identify his/her position in the business and did not indicate how the applicant was paid. In view of these omissions, the AAO concludes that the employment letter has limited evidentiary weight.

As for the affidavits/letters discussed above, they provide almost no information about the applicant. None of the affiants indicated that the applicant entered the United States before January 1, 1982, and none specified exactly where the applicant lived in Florida during the 1980s. The affiants provided few details about the applicant’s life in the United States, where he worked, and the nature and extent of their interaction with him over the years. None of the affiants submitted any evidence of their relationship with the applicant – such as photographs, letters, or other documents – and none of them submitted any documentation of their own identity and presence in the United States during the 1980s. In view of these infirmities, the affidavits are not persuasive evidence of the applicant’s continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis, the AAO concludes 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 to be eligible for legalization under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the appeal will be dismissed, and the application denied.

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