

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 02 193 62237

Office: SAN FRANCISCO

Date: OCT 02 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 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 applicant submitted the Form I-485, Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000 on April 11, 2002. On November 9, 2004, the district director denied the application because the applicant failed to meet his burden of proof establishing that he entered the United States before January 1, 1982, and resided in a continuous unlawful status for the requisite statutory time period.

On appeal, counsel for the applicant asserts that the director's findings are arbitrary and that the applicant has demonstrated through his credible testimony and corroborating evidence that he entered the United States in November 1981, and resided in the United States continuously through 1988.

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 period, 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 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 AAO has reviewed the totality of the record. The AAO observes that the applicant filed a Form I-589, Application for Asylum and Withholding of Deportation on March 25, 1997 and was provided the A number – [REDACTED]. The record of proceeding for [REDACTED] has been consolidated into the record of proceeding for [REDACTED].¹

Although the AAO has reviewed the totality of the record before it, only the evidence that is directly relevant to the January 1, 1982 through May 4, 1988 time period and any other evidence that might reflect upon the applicant's credibility will be listed and considered in this decision. The record contains the following documentation pertinent to the applicant's residence in the United States during the pertinent time period from prior to January 1, 1982 through May 4, 1988.

On the Form I-687 filed December 14, 2004, the applicant lists his addresses for the pertinent time period as: [REDACTED], Stockton, California from November 1981 to October 1982; [REDACTED] Lodi, California from October 1982 to September 1984; [REDACTED] Lodi, California from October 1984 to September 1987; and [REDACTED], Brooklyn, New York from September 1987 to December 1990. The applicant indicates he was employed in Stockton, California for [REDACTED], as a laborer from April 1982 to October 1988.

The record contains a photocopy of a Form I-95A, Crewman's Landing Permit with the applicant's name and date of birth showing that he arrived August 17, 1981 at Galveston, Texas. The record also includes a photocopy of a U.S. Department of Immigration and Naturalization Service document showing a date of arrival as November 27, 1981 in Seattle, but the photocopy of the document does not identify the holder of the document. The record further includes:

- An affidavit notarized September 18, 1997, signed by [REDACTED] who declares that he is a resident of San Rafeal, [sic] California and that he has personally known the applicant, a resident of Santa Rosa, California since January 1982 and that he and the applicant also lived together in Santa Rosa from 1991 to 1993.

¹ The consolidated record includes the applicant's Form I-589 which was denied by an immigration judge on August 26, 1998 and the Board of Immigration Appeals dismissal of a subsequently filed appeal on March 11, 2002. The record also includes the June 19, 2003 warrant of removal/deportation for the applicant issued by the United States Department of Justice, Immigration and Naturalization Service. The consolidated record also includes the applicant's Form I-687, filed December 14, 2004, shortly after the San Francisco district director issued a denial decision of this matter on November 9, 2004.

- An affidavit notarized October 20, 1997, signed by [REDACTED], a resident of [REDACTED], Brooklyn, New York, who declares that he has personally known the applicant, a resident in Santa Rosa, California, since 1987.
- A declaration dated July 22, 1998 signed by [REDACTED] who declares that he shared an apartment with the applicant at [REDACTED] in Brooklyn, New York between December 1987 and December 1990.
- A document signed by [REDACTED] on June 29, 1991 and attested to by a notary public of the Mamhood Sultan Advocate in Pakistan, wherein the affiant declares that he is the brother of the applicant and that the applicant returned to Pakistan from the United States on November 5, 1987 for the funeral of their maternal uncle and that the applicant left Pakistan for the United States on December 8, 1987.
- A photocopy of a document on the letterhead of Bank of America Karachi Branch, dated October 1, 1981 referencing [REDACTED] and a remittance credited to his account in Pakistan.
- Photocopies of partial envelopes bearing indiscernible postmarks and postmarks after the relevant time period.

In the Notice of Intent to Deny (NOID), dated July 15, 2003, the acting District Director requested evidence of the applicant's unlawful status and continuous residence in the United States from January 1, 1982 through May 4, 1988; evidence of continuous physical presence in the United States from November 6, 1986 through May 4, 1988; and a list of all absences from the United States between January 1, 1982 and May 4, 1988, including dates of departure from, and dates of return to, the United States. In the district director's November 9, 2004 denial decision, the director noted that the applicant had submitted voluminous documentation demonstrating the applicant's residence in the United States after the year of 1988, but that the applicant had only submitted unsupported affidavits to establish residence in the United States between the years 1981 and 1988. The director observed that although requested to submit additional documentation, the applicant had not submitted further evidence. The district director found that the affidavits submitted had minimal probative value as the affidavits relied on the veracity of the affiants' memory many years after the fact. The district director found that the submission of unsupported affidavits as the only evidence of the applicant's residence between the years 1981 and 1988 was in contrast with the applicant's apparent record keeping habits after the relevant time period. The district director denied the application finding the applicant's claim of continuous residence in the United States from 1981 until 1988 is without merit.

On appeal, counsel for the applicant asserts that discounting the applicant's witness letters is arbitrary, that the Form I-95A, Crewman's Landing Permit has not been found to be fraudulent, and there is no evidence in the record that the director ever attempted to verify any of the applicant's evidence. Counsel notes that the applicant applied for CSS class membership in 1991 and was issued an employment authorization document and contends that the applicant lived in a "shadow population" of undocumented aliens and thus the evidence to prove his residence during the time he was undocumented would be limited.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status beginning prior to January 1, 1982, through May 4, 1988.

The AAO has reviewed each document submitted to determine whether the applicant has submitted credible, consistent evidence that would establish by a preponderance of the evidence that the applicant has continuously resided in the United States for the requisite time period. The AAO finds that the applicant has established that he entered the United States prior to January 1, 1982. The AAO finds the applicant's crewman landing permit probative and this document shows the applicant arrived in the United States on August 17, 1981.² The record, however, provides insufficient evidence that the applicant resided in the United States from January 1, 1982 through the requisite time period.

The applicant has submitted one affidavit to establish his residence in the **United States from prior to January 1, 1982 to sometime in 1987**. In the September 18, 1997 affidavit signed by [REDACTED], the affiant declares that he has known the applicant since 1982 and that he and the applicant lived together from 1991 to 1993, a time subsequent to the requisite time period. The affiant does not include any statements that detail the circumstances and events of how he met the applicant, the period of the affiant's personal association with the applicant, or the addresses the applicant lived at during the association. The affidavit is void of details of the interactions, if any, between the affiant and the applicant during the requisite time period. The affidavit is deficient in any details that would tend to corroborate the accuracy of the information in the affidavit. The affidavit is not probative in establishing the applicant's continuous unlawful residence in the United States from January 1982 through the requisite time period.

The AAO has also reviewed the affidavit signed by [REDACTED] and the declaration signed by [REDACTED]. Mr. [REDACTED], in his October 20, 1997 affidavit declares that he has known the applicant since 1987 and although indicating he currently (1997) lives at the same address as the applicant claimed to have lived at from September 1987 to December 1990 makes no mention of this fact. In addition, similar to the affidavit of [REDACTED] discussed above, Mr. [REDACTED] does not include any information regarding how he met the applicant or any details of their continued association. The affidavit lacks any details about the applicant during the attested period that would demonstrate the truth of the affiant's assertion that the applicant lived in the United States during the time period of the applicant and the affiant's association. Similarly, the July 22, 1998 declaration signed by [REDACTED], while declaring that the applicant shared an apartment with him between December 1987 and December 1990 does not provide any additional information regarding the claimed relationship. The declarant does not include any details describing how he met the applicant and subsequent interactions during their association. The declaration does not contain details or information that would assist in verifying the claimed relationship. Neither the affidavit nor the declaration is probative of the applicant's continuing residence in the United States during the requisite period.

² Although the photocopy of the U.S. Department of Immigration and Naturalization Service document showing a date of arrival as November 27, 1981 in Seattle, may be the reverse side of the applicant's Form I-95A, Crewman's Landing Permit, the lack of the original document and the lack of identifying information on this document makes such a conclusion speculative.

The AAO has examined the document signed by the applicant's brother attesting to the applicant's appearance in Pakistan from November 5, 1987 to December 8, 1987; a photocopy of a Bank of America Karachi Branch letter referencing a remittance to an account in Pakistan; and photocopies of partial envelopes bearing indiscernible postmarks and the envelopes with postmarks after the relevant time period. These documents do not contain sufficient identifying information or descriptions to establish the applicant's residence in the United States during the applicable time period. These documents are neither probative nor relevant to establishing the applicant's continuous residence in the United States from prior to January 1, 1982 through the requisite time period.

The applicant's statements regarding his entry into the United States prior to January 1, 1982 are not substantiated by other independent corroborating evidence. Although the applicant has submitted two affidavits and a declaration in support of his application, the general nature of the information in these documents is insufficient to infer that the applicant actually lived in the United States during the requisite time period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. Given the applicant's reliance upon deficient documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Beyond the decision of the director, the record shows that the applicant was ordered removed from the United States on March 11, 2002, and thus was inadmissible to the United States under section 212(a)(9) of the Act, when he re-entered the United States on August 30, 2003. Although CIS computer records show that the applicant was granted advance parole on May 12, 2003; there is no documentation in the file or in CIS computer records showing that the applicant applied for a waiver of a ground of inadmissibility or that such waiver was granted. The director's improper approval of a request for advance parole does not alter the requirement to file and obtain a waiver of a ground of inadmissibility. The AAO finds that the applicant was inadmissible when entering the United States on August 30, 2003. For this additional reason, the application will not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Therefore, based on the above, the applicant has failed to establish continuous unlawful residence for the duration of the requisite time period, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, and the fact that the applicant is inadmissible, 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.