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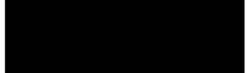
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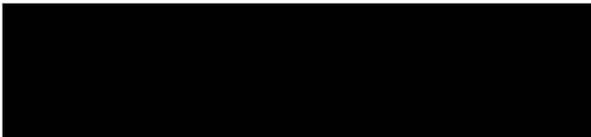
IN RE: Applicant:



APPLICATION:

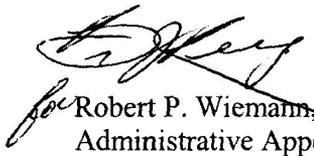
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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 Houston, Texas. 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 maintained continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and continuous physical presence in the country from November 6, 1986 through May 4, 1988.

On appeal, counsel asserts that the director erred in finding that the applicant's absence(s) from the United States interrupted his continuous residence and continuous physical presence in the United States. Counsel submits additional documentation with the appeal.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and 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 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 and citizen of Pakistan who claims to have resided in the United States since April 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on February 18, 2002. On October 28, 2002, he was interviewed in Houston, Texas.

In a Notice of Intent to Deny (NOID), issued on November 20, 2002, the director cited the applicant’s testimony at his LIFE legalization interview on October 28, 2002, that he had one absence from the United States beginning in August 1987 for approximately one and a half months to Canada. The director also noted the information provided on the applicant’s Form I-485, however, that his wife bore three children in Pakistan in 1983, 1985, and 1988, despite the applicant’s testimony that he had not seen her since 1981.

According to the director, the absence from the United States beginning in August 1987 was in excess of a single absence of 45 days allowed in the regulation, and the applicant had failed to establish “emergent reasons” that prevented his return to the United States within the 45 days limit. The director concluded that the applicant failed to maintain continuous residence in the United States from prior to January 1, 1982 through May 4, 1988, and failed to maintain continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The applicant was given 30 days to respond and/or submit additional evidence.

In response, the applicant requested a twenty day extension to submit documentation in rebuttal to the director’s NOID. The applicant failed to submit any other documentation and on August 29, 2003, the director denied the application based on the grounds stated in the NOID.

On appeal, counsel asserts that the director erred in his finding that the applicant’s one and a half month absence from the United States in 1987 barred the applicant from adjustment under the

LIFE act, and erred in finding that the applicant's absence in August 1987 was not brief, casual and innocent.

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).

On his CSS/LULAC Form dated May 1, 1990, the applicant stated that he departed from August 31, 1987 and returned on October 15, 1987 – a 45-day absence – which does not exceed the required limit. On his Form I-485 application dated January 12, 2002, the applicant stated that he had three children born in Pakistan on April 12, 1983, June 11, 1985 and December 8, 1988. At his LIFE Legalization interview on October 28, 2002, the applicant testified that he traveled outside the United States only once in 1987 to Canada and that he had not seen his wife since he left Pakistan in 1981. On his Form I-687, dated May 2, 1990, the applicant listed one absence from the United States from August 1987 to October 1987 with no specific dates. The applicant listed no other absences.

The applicant's testimony that he made only one trip outside the United States in 1987 for about one and a half month is in direct contradiction with the information contained on his Form I-485, indicating that the applicant fathered three children in Pakistan born in 1983, 1985 and 1988. The applicant provided no other information to account for the conflicting testimony that he did not see his wife after 1981 and yet he fathered three children in Pakistan during the 1980s. This contradiction casts doubt to the veracity of the applicant's claim that he resided continuously in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the country from November 6, 1986 through May 4, 1988. It also calls into question when the applicant entered the United States, how many times he traveled outside the United States and for how long.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *See id.*

The applicant submitted affidavits and other documents in support of his claim that he has continuously resided in the United States from before January 1, 1982 through May 4, 1988. The AAO finds that the affidavits and documents submitted by the applicant as evidence of his continuous residence in the United States are substantively deficient and do not overcome the inconsistencies noted above.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States from 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 section 1104 of 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.