

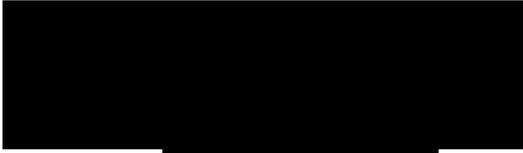
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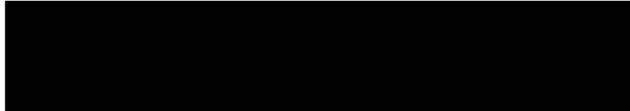


FILE: [Redacted]
MSC 02 064 61543

Office: NEW YORK CITY

Date: SEP 03 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: SELF REPRESENTED

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 (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 entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant asserts that the director did not give proper weight to the evidence he submitted to establish his continuous unlawful residence in the United States during the 1980s.

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.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

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 Pakistan who claims to have lived in the United States since May 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on December 3, 2001. As evidence of his residence in the United States during the years 1981-1988, the applicant submitted a series of affidavits some of which had originally been filed in 1990. They included the following:

An affidavit from [REDACTED] the general partner of Rosemont Associates in Chicago, Illinois, dated October 5, 1990, stating that he owned and managed an apartment building at [REDACTED], and that the applicant was a tenant at the building in Apartments [REDACTED] and [REDACTED] from May 1, 1980 to April 30, 1984.

An affidavit from [REDACTED] a resident of Skokie, Illinois, dated October 27, 1990, stating that he had known the applicant for the last ten years. that the applicant was his roommate at [REDACTED] Chicago, from 1984 to 1988, and at [REDACTED] Skokie, Illinois, from 1988 until the present (October 1990).

- An affidavit from [REDACTED], a resident of Waycross, Georgia, dated January 26, 2004, stating that he has personal knowledge that the applicant has been residing in the United States from 1981 to the present (January 2004), and that the applicant is a very close family friend.
- An affidavit from [REDACTED], a resident of Brooklyn, New York, dated January 29, 2004, stating that he has personal knowledge that the applicant has been living in the United States from 1981 to the present (January 2004), that they have been friends since 1987, and that he met the applicant the first time in New York.
- An affidavit from [REDACTED] a resident of Brooklyn, New York, dated February 4, 2004, stating that he has personal knowledge that the applicant has been residing in the United States from 1981 to the present (February 2004), that they have been friends since 1987, and that he first met the applicant in New York.
- An affidavit from [REDACTED] a resident of Brooklyn, New York, dated February 6, 2004, stating that he has personal knowledge that the applicant has been living in the United States since 1981, that they have been friends since 1985, and that he met the applicant the first time in Chicago.

In a Notice of Intent to Deny (NOID), dated September 13, 2006, the director noted certain inconsistencies in the information provided in the affidavits and the applicant's interview and written testimony. The director concluded that the inconsistencies undermined the credibility of the applicant's claim to have resided continuously in the United States during the time period required for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

In response, the applicant offered some explanations for the evidentiary inconsistencies cited in the NOID. The applicant submitted additional affidavits, which included the following:

An affidavit from [REDACTED] a resident of Brooklyn, New York, dated October 5, 2006, stating that he met the applicant for the first time in December 1981 at a Mosque in Queens, that the applicant told him that he was visiting from Chicago, that they became friends and exchanged telephone numbers, and that the applicant moved to New York after 1990. Mr. [REDACTED] further attested that the applicant told him that he went to Pakistan through Canada in 1987 and returned after thirty days, and that he knew that the applicant tried to file his legalization application during the period between May 5, 1987 and May 4, 1988, but was turned away because the agency believed that he traveled outside the United States after November 6, 1986.

- A second affidavit from [REDACTED], of Skokie, Illinois, dated October 4, 2006, stating that he first met the applicant in December 1981, that they have known each other since then and visit each other often, that the applicant was his roommate from 1984 to 1988 at [REDACTED] Chicago, Illinois, and that he knew the applicant tried to file his legalization application during the period between May 5, 1987 and May 4, 1988, but was turned away because the agency believed that he traveled outside the United States after November 6, 1986.

On January 10, 2007, the director issued a Notice of Decision denying the application. The director found that the applicant's rebuttal and the two new affidavits submitted in response to the NOID were insufficient to overcome the grounds for denial. The director noted that the applicant's own affidavit contradicted his prior testimony regarding his entry and his application for amnesty, and that the applicant's rebuttal failed to address the inconsistencies cited in the NOID. The director concluded that the evidence of record is insufficient to establish that the applicant entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required for legalization under the LIFE Act.

On appeal, the applicant asserts that the director abused his discretion in denying the application, in that he failed to give proper weight to the evidence submitted. The applicant resubmitted documents already in the record.

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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The affidavit from [REDACTED], provides some basic information about the applicant - specifically, the address he claimed in the United States during the period 1980 to 1984 - but provided no details about the applicant's life in the United States and his interaction with the affiant during the years attested. Mr. [REDACTED] did not provide any documentation of his own identity and presence in the United States during the period attested. In addition, the affidavit is not accompanied by any rental agreement, rental receipts, or other documentation to show that the applicant resided at the address during the periods attested, and provides no other information about the applicant's continuous residence in the United States beyond April 1984. The

affidavit has little probative value as evidence of the applicant's continuous residence from before January 1, 1982 through May 4, 1988.

The affidavits from [REDACTED], [REDACTED], and [REDACTED] all have minimalist formats with little input by the affiants. The information in the affidavits is not very personal in nature, and could just as easily have been provided by the applicant. While they all claim to have known the applicant since 1981, the affiants provide almost no information about his life in the United States and their interaction with him over the years. The affiants all claim to have personal knowledge of what they attested, but failed to provide information on how they acquired the knowledge. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982.

The affidavit from [REDACTED] which is based in part on what the applicant told him, did not provide independent information about his relationship and interaction with the applicant over the years. The affiant, claimed that he had personal knowledge that the applicant attempted to file for legalization between May 5, 1987 and May 4, 1988, but did not provide information on how he acquired the knowledge of what he attested. This is especially important because the affiant was residing in New York at the time and the applicant claims that he attempted to file for legalization in Illinois. Furthermore, the affidavit was not accompanied by any documentary evidence from the affiant – such as photographs, letters, and the like – of his personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavit has little probative value and is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982.

In view of these substantive shortcomings, the AAO finds that the affidavit has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982.

The affidavits from [REDACTED], dated October 27, 1990 and October 4, 2006, provide some basic information such as the addresses claimed by the applicant during the period 1984 to 1990, but provided no detailed information of his relationship with the applicant during the six years they lived together, or the ten years he claims to have known the applicant. Nor are the affidavits accompanied by any documentary evidence from the affiant – such as photographs, letters, and the like – of his personal relationship with the applicant in the United States during the 1980s. In addition, Mr. [REDACTED] attested that he knew that the applicant attempted to file for legalization between May 5, 1987 and May 4, 1988, and was rejected. Mr. [REDACTED] did not state how he acquired that knowledge.

In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982.

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