

identifying data deleted
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE:



Office: NEW YORK Date:

APR 06 2009

MSC 01 331 61235

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).

IN 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing ██████████ to act on behalf of the applicant, ██████████ is no longer authorized to represent the applicant pursuant to 8 C.F.R. § 292.1(a).¹ As such, the decision will be furnished only to the applicant.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988. The director also denied the application because it was determined that the applicant had been absent for more than 30 days from November 6, 1986 to May 4, 1988 and it was not due to an emergent reason.

On appeal, the applicant asserts that because he was illegally in the United States, he has no primary evidence to submit. The applicant asserts that the director made no effort to verify the affidavits and totally ignored the instructions followed in a memorandum dated February 13, 1989, from ██████████. The applicant asserts that the director's decision is arbitrary and an abuse of discretion because it is without specific and cogent reasons.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

“Continuous residence” is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

(1) 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. [Emphasis added.]

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. 8 C.F.R. § 245a.11(c).

The regulation at 8 C.F.R. § 245a.16(b) reads as follows:

¹ See <http://www.usdoj.gov/eoir/profcond/chart.htm>

For purposes of this section, 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. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, 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.

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 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 first issue to be addressed is the applicant’s 1987 absence from the United States.

At the time of his initial interview on August 5, 1997, the applicant, through an interpreter, indicated that the first time he departed the United States was in 1987 and he returned after six weeks. The applicant indicated on his Form I-687 application the purpose for his absence was to visit his family in Pakistan.

In response to a Notice of Intent to Deny issued on September 6, 2007, the applicant's former counsel asserted, "[r]egarding his [the applicant] trip to Pakistan in Aug. 87, it was for six weeks. He [the applicant] recalls making the same statement at the interview."

The director, in denying the application, noted that the applicant did not maintain continuous physical presence from November 6, 1986 through May 4, 1988. The director noted that the absence was more than 30 days, was not brief, casual and innocent, and that no evidence was submitted to establish the prolonged absence was due to an emergent reason.

It is not necessary for the applicant to provide an *emergent reason* for physical presence as the regulation at 8 C.F.R. § 245a.16(b) does not require it. *If* the applicant's absence has exceeded 45 days, his absence will be examined utilizing the standard set forth in 8 C.F.R. § 245a.15(c)(1), and evidence would be required to make a determination whether his prolonged absence from the United States was due to an emergent reason. In the instant case, the applicant's absence of six weeks is less than 45 days and, therefore, an emergent reason is not required.

The term "casual" is not defined in the statute, though its parameters can be gleaned in the regulatory guideline that "temporary, occasional trips abroad" are not inconsistent with an alien's "continuous physical presence" in the United States. *See* 8 C.F.R. § 245a.16(b). Nor is the term "innocent" defined in the statute. It seems logical, however, that an absence would be "innocent" if it does not involve illegal activities or other conduct in conflict with United States national interests and is "consistent with the policies reflected in the immigration laws of the United States," as the regulation requires.

The second issue to be addressed is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. Here, the applicant has failed to meet this burden.

At the time of his initial interview on August 5, 1997, the applicant, through an interpreter, indicated that his spouse had never visited the United States and his children were born in Pakistan in 1980, 1988, 1992 and 1995.

On his Form I-687 application filed in March 1992, the applicant listed his wife's name as [REDACTED] (date of birth November 13, 1966) and his first and second child's dates of birth as October 7, 1981 [REDACTED] and April 6, 1985 ([REDACTED]). On his LIFE application filed on August 27, 2001, the applicant listed his wife's name as [REDACTED] (date of birth November 13, 1966) and his first and second child's dates of birth as October 7, 1981 ([REDACTED]) and April 6, 1988 [REDACTED].

A Form I-140, Immigrant Petition for Alien Worker, was filed October 5, 1999, on behalf of the applicant. Part 7 of the form listed the wife's name as [REDACTED] (date of birth June 22, 1962) and the dates of birth of the applicant's first, second and third child, who were born in Pakistan, as November 10, 1985 [REDACTED], October 19, 1987 [REDACTED] and December 9, 1988 [REDACTED]

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- An undated statement from [REDACTED] in Miami, Florida, who attested to the applicant's employment as a laborer from July 1981 to June 1985.
- An undated statement from [REDACTED] in Charleston, South Carolina, who attested to the applicant's employment as a laborer from August 1985 to August 1987.
- An undated statement from [REDACTED] in Washington, D.C. who attested to the applicant's employment as a clerk since November 1987.
- An affidavit from [REDACTED] of Miami, Florida, who indicated that the applicant resided at [REDACTED], Miami, Florida from July 1981 to July 1985.
- An affidavit from [REDACTED] of Charleston, South Carolina, who indicated that the applicant resided with him at [REDACTED] Charleston, South Carolina from August 1985 to August 1987. The affiant asserted that the rent receipts were in his name.
- An affidavit from [REDACTED] of Alexandria, Virginia, who indicated that the applicant has resided at [REDACTED] Alexandria, Virginia since November 1987.
- A statement indicating that he departed the United States in September 1987 and returned in October 1987.
- Two loan agreements from [REDACTED], a car rental agreement dated January 17, 1981 for a 1980 Ford Taurus and receipts dated during the requisite period.

On September 6, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that he provided no proof of his entry into Mexico in 1981 and of the inconsistencies between the dates of birth for his children listed on his applications and the Form I-140. The applicant was advised that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was further advised that: 1) [REDACTED] was contacted and indicated that the records of [REDACTED] did not show employment for the applicant.; 2) the statement from [REDACTED] was not verifiable; 3) the loan agreements were fraudulent as contact with Cape Cod Womens' Credit Union (now doing business as First Citizen's Federal Credit Union) revealed that the applicant was never a member of the credit

union; and 4) the rental car agreement was fraudulent as the applicant indicated that he first arrived in the United States in August 1981 and the Ford Taurus was not manufactured until 1986.

In response, former counsel asserted that the car rental agreement is genuine as "alien was new in the Country. Car Rental people might have described a wrong car in the letter." Regarding the dates of birth of the applicant's children, he asserted:

There seems to be some confusion about his Children date of births. It seems that whoever prepared his I-140 created this confusion. His one child is born in April, 81; other one in April 88 and another in Dec. 89. This should clear some confusion.

Regarding the employment statements, former counsel asserted that the applicant worked off the books at [REDACTED] and "[REDACTED] got scared to verify the employment" and [REDACTED] is no longer in business and the applicant cannot find a new contact number.

The applicant's former counsel asserted that the applicant has no evidence to produce regarding his entry in August 1981 as "his papers, to enter Mexico, were taken by the agent, who helped him to cross into the U.S." He further asserted that the employment letter from [REDACTED] listed an address and telephone number, but the employment was not verified nor were the affidavits from the affiants who attested to the applicant's residence. In addition, he submitted copies of documents that were previously submitted along with an affidavit from [REDACTED] who indicated that he met the applicant in 1983 in Brooklyn, New York and has seen the applicant on and off since that time.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility.

No credible evidence has been provided to support the applicant's former counsel's assertions regarding the car rental agreement, the assertion of [REDACTED] and the dates of birth of the applicant's children. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-*

Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Further, the issue regarding the loan agreements has not been addressed.

The employment affidavits failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to 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.

indicated that he has known the applicant since 1983, and and attested to the applicant's residence in Miami, Florida and Alexandria, Virginia, respectively. However, the affiants failed to provide details regarding the nature or origin of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant 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.