

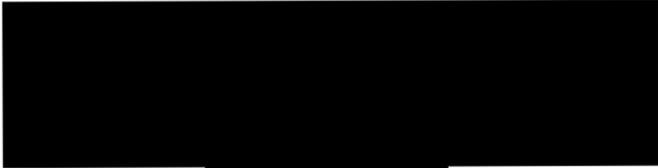
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**



42

FILE:

MSC 02 071 63449

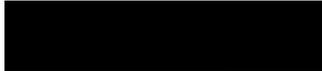
Office: GARDEN CITY

Date:

APR 14 2009

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:



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. Grisson  
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, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

On appeal, counsel asserts that due to the passage of time, the applicant is not in possession of legal documents that he had used to gain entry in the United States; the applicant is unable to establish that he was physically present and continuously resided in the United States before January 1, 1982; and he is unable to obtain any further documents from the affiants.

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).

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 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 during the requisite period. Here, the applicant has failed to meet this burden.

The applicant indicated on his Affidavit to Determine Class Membership that he entered the United States in March 1981 with a visitor visa at John F. Kennedy International Airport.

At item 35 on his Form I-687 application the applicant listed one absence during the requisite period; January 1987 to February 1987 to attend his father's funeral.

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

- A letter from [REDACTED] of Manhattan Gifts (N.Y.) Inc. in New York City, who attested to the applicant's employment as a sales helper from June 1981 to December 1986.
- A letter dated October 12, 1990, from [REDACTED] of International Islam Foundation of New York in Queens, New York, who indicated that the applicant has been visiting the foundation since 1984. The affiant asserted that the applicant takes part in all the religious matters.
- An affidavit from [REDACTED] who indicated that the applicant had been "living in my apartment with a friend" at [REDACTED], Woodside, New York from March 1981 to May 1985.
- An affidavit from [REDACTED], who indicated that she has known the applicant since December 1985 during the time he was residing in Great Neck, New York.
- An affidavit from [REDACTED], who indicated that he has known the applicant since July 1985. The affiant asserted that during that time, the applicant worked as a salesman in Manhattan and residing in Great Neck, New York.
- An affidavit from [REDACTED] of Little Neck, New York, who indicated that the applicant resided with him from January 1987 to September 1990 at [REDACTED] Little Neck, New York.

- A letter from a dealer, [REDACTED] at Ben's Service Station in Roslyn Heights, New York, who attested to the applicant's employment as a gas attendant from January 1987 to September 1990.
- Affidavits from [REDACTED] and [REDACTED] who attested to the applicant's New York residences at [REDACTED] Woodside from March 1981 to May 1985; [REDACTED] Great Neck from June 1985 to December 1986; and [REDACTED] Little Neck from January 1987 to September 1990. [REDACTED] indicated that he met the applicant in June 1981 at a friend's house. [REDACTED] indicated that she met the applicant in 1981 at Elmhurst Hospital.
- A Form MV-500, Learner's Permit, dated February 20, 1987 from the New York State Department of Motor Vehicles.

The applicant also submitted letter from the Muslim Center of New York. However, the letter has no probative value as it is silent to initial date the applicant attended Friday congregations.

On November 18, 2007, the director issued a Notice of Intent to Deny, which advised the applicant: 1) of his failure to submit evidence of his March 1981 entry with a non-immigrant visa and that Service records do not reflect such an entry; 2) that his Pakistani passport reflects that it was issued to him on March 1, 1987 in Lahore, Pakistan and that he indicated on his Form G-325A, Biographic Information, dated November 8, 2001, to have been married on February 9, 1985 in Lahore Pakistan. The failure to disclose these absences cast doubt upon his credibility; 3) the address listed on the Form MV-5500 was not consistent with the addresses listed on his Form I-687 application; 4) 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; 5) the telephone number listed on the letter from Manhattan Gifts (N.Y.) Inc., was not in service and no listing could be located for the entity; 6) no supporting documents were submitted to corroborate the employment letters; and 7) no telephone contact information was provided from International Islamic Foundation of New York Inc., and no listing could be located with the New York Department of State.

Counsel, in response, asserted that due to the passage of time, the only evidence available for submission is affidavits or letters. Counsel asserted that the applicant made best efforts to obtain information from the affiants, but was unable to reach them. Counsel asserted that evidence in the record prove beyond doubt that the applicant was in the United States prior to year 1981.

The director, in denying the application, noted that counsel's statement was insufficient to overcome the grounds for denial.

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 counsel 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 inconsistent documents, which undermines his credibility.

The employment letters 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.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the Iman does not explain the origin of the information to which he attests.

The affiants failed to provide any details regarding the nature 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.

Neither counsel nor the applicant has addressed the director's findings regarding his passport and the Form G-325A, which indicates that the passport was issued in March 1987 in Pakistan and he was married in Pakistan in 1985, respectively. The applicant's failure to disclose these absences from the United States is a strong indication that the applicant was not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation.

It is noted that the applicant, at the time of his LIFE interview, indicated that his spouse had never visited the United States, Canada or Mexico during the requisite period. The applicant, however, indicated on his application to have a set of twins born October 6, 1987 in Pakistan. The birth of his children is consistent with the applicant being in his native country, Pakistan, during March 1987.

Although counsel contends that no attempt has been made to verify the content of testimony contained in the supporting affidavits, he fails to advance any compelling reason as to why any attempt should be made in light of the minimal probative value of the applicant's evidence of residence.

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 (5<sup>th</sup> 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.