



U.S. Citizenship
and Immigration
Services

[REDACTED]

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FILE: [REDACTED] Office: HOUSTON Date: DEC 03 2009
MSC 02 242 62922
[REDACTED]

IN RE: Applicant: [REDACTED]

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:
[REDACTED]

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.

Perry Rhew
Chief, Administrative Appeals Office

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

The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, the applicant submits additional documentation for consideration.

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 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 pertinent evidence in the record is described below.

1. Notarized statements from [REDACTED] who states he knows the applicant has resided in the United States since 1981.
2. A letter from [REDACTED] who states he knows the applicant has resided in the United States since 1982.
3. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1982.
4. Letters from [REDACTED] and [REDACTED] of the Houston Soccer Association, who state they know the applicant has resided in the United States since 1984.
5. Letters from [REDACTED] and [REDACTED] of the Apex National Insurance Group in Houston, Texas, who state they know the applicant has resided in the United States since 1985.
6. A letter from [REDACTED] of The Islamic Society of Greater Houston who states the applicant has been participating in the activities of the organization since 1981.

7. A letter from [REDACTED] of the Islamic Mission Masjid Noor in Houston, Texas, who states the applicant has been a member of the organization since 1986.
8. A letter from [REDACTED] who states that the applicant resided at [REDACTED] in Houston, Texas, from January 1982 to December 1984.
9. The applicant's rental application for renewal dated February 1, 1989 for his apartment at [REDACTED] in Houston, Texas. The application reflects his previous street address was [REDACTED] in Houston, Texas.
10. A letter from [REDACTED] in Houston, Texas, who states the applicant resided at [REDACTED] in Houston, Texas, from February 1, 1986 to September 30, 1989.
11. An envelope from a person in Pakistan addressed to the applicant in Houston, Texas, postmarked October 12, 1984.
12. The applicant's receipts from [REDACTED] in Houston, Texas, dated February 9, 1984, March 21, 1984 and April 13, 1984.
13. A letter from [REDACTED] dated March 28, 1984 from Northwest New & Used Office Furniture addressed to the applicant in Houston, Texas.
14. An employment verification letter from [REDACTED] of Fuel Food Mart in Houston, Texas, who states the applicant was employed by the firm from March 1982 to December 1982.
15. An employment verification letter from [REDACTED] in Houston, Texas, who states the applicant worked for the firm from February 1983 to November 1984.
16. A notarized verification of employment document from [REDACTED] who states the applicant worked for him at Sunset Food Store in Houston, Texas, from January 1985 to April 1990.
17. The applicant's receipt dated August 27, 1987 from T Shirts Etcetera in Houston, Texas.
18. The applicant's [REDACTED] dated April 9, 1987 from a firm in New York, New York, showing his consignment address as being in Houston, Texas.

The persons providing letters and statements (Items # 1 through # 5 above) claim to have known the applicant for a substantial length of time, in one case since 1981. However, their statements are not accompanied by any documentary evidence such as photographs, letters or other

documents establishing the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements have little probative value. On his Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, filed on July 5, 2005, the applicant was asked to list any affiliations or associations that he had in the United States such as clubs, organizations, churches unions or businesses. He did not list The Islamic Society of Greater Houston (Item # 6), or Islamic Mission Masjid Noor (Item # 7).

On his Form I-687, the applicant stated that he resided at [REDACTED] from January 1982 to December 1984 and at [REDACTED] in Houston, Texas, from January 1985 to April 1990. However, his rental application for renewal (Item # 9) dated February 1, 1989 indicates his previous street address was [REDACTED] in Houston, Texas, (Item # 8) and not [REDACTED] in Houston, Texas, the address where he said he resided on his Form I-687 before he moved to [REDACTED]. The letter from [REDACTED] (Item # 10) indicates the applicant resided at [REDACTED] in Houston, Texas, from February 1, 1986 to September 30, 1989. However, the applicant's stated on his Form I-687 that he resided at [REDACTED] in Houston, Texas, from January 1985 to April 1990. The envelope (Item # 11) does not bear any indication that it ever entered the United States postal system.

In her decision dated December 21, 2007 denying the applicant's Form I-687, the director found that the applicant had provided three receipts with 1984 dates from a business called [REDACTED] (Item # 12) which pre-dated the existence of the company by three years as the company was not founded until January 1987. The record contains a letter to the applicant dated March 28, 1984 (Item # 13) from the same company. On January 21, 2008, counsel indicated the [REDACTED] receipts were presented by the owner of the business and that her client reiterated that he bought the furniture in 1984, that he did not want to get himself into trouble with the United States Government and that he had not submitted any false information. However, no evidence has been submitted to overcome the director's December 21, 2007 finding. Additionally, the employment verification letters (Items # 14 through # 16) do not provide the applicant's address at the time of employment and identify the location of company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i). The applicant's receipt (Item # 17) and his [REDACTED] (Item # 18) do not establish that the applicant resided in the United States during the entire requisite period.

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. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility