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U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 02 106 64574

Office: FAIRFAX

Date:

JAN 09 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).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Chief
Administrative Appeals Office

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

The district director denied the application due to abandonment because the applicant had failed to respond to a Request for Evidence (RFE).

On appeal, the applicant states he has submitted his evidence in response and provides a copy of mail receipts in support of his assertion.

An examination of the record reveals that the applicant appears to have responded to the director's RFE in October 2002. The evidence will be accepted on appeal and the AAO will adjudicate the application based on the record. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd. 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

An applicant for permanent resident status 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. 8 C.F.R. § 245a.11(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 amenability to verification. 8 C.F.R. § 245a.12(e).

Although United States Citizenship and Immigration Services (USCIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In this case the applicant has submitted very little evidence, and the evidence which has been submitted consists entirely of affidavits.

On September 17, 2002, and February 19, 2004, the director sent the applicant Requests for Evidence (RFE) seeking additional evidence of the applicant's continuous unlawful residence during the required period, details of the applicant's entry into the United States, and a copy of the final disposition for any arrests listed on the applicant's records.

In response the applicant has submitted two letters and a copy of a final disposition.

The applicant has failed to provide any details surrounding his entry into the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165

(Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The applicant has also failed to submit sufficient, credible evidence of his continuous unlawful residence during the required period. Relevant to the required period in question the record includes the following evidence:

- (1) A letter from a person claiming to be a cab driver in Lahore, Pakistan, asserting that he met the applicant in June 1981 when he stayed at his apartment in Brooklyn, New York.
- (2) A letter from an individual claiming to be an Imam at the Muslim community center in Brooklyn, New York, asserting that he met the applicant in 1981.
- (3) Copy of a lease extension from 1981 – 1983 bearing the applicant's name and applicant's address for that period.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. In this case there is so little evidence that USCIS cannot even establish prima facie eligibility. The two letters submitted are so generic in nature that they are not sufficiently probative to provide any support for the applicant's assertions. As stated in 8 C.F.R. § 245.15(b)(1), a list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3). However, no such evidence has been submitted. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. § 245a.12(e).

Given the absence of contemporaneous documentation, the failure of the applicant to have clearly explained the facts surrounding his claimed entry prior to January 1, 1982, on all of his applications, and the reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, continuous residence for the required period.

The AAO would note that the record contains a copy of an inspection interview from 1992, in which the applicant states that he has been living in Pakistan for the last five years and seeks political asylum because he and his brother had been jailed for their political activities. It contains a copy of his alleged party membership from 1988, and the fake passport the applicant used in an attempt to enter the United States. The presence of this evidence directly contradicts the applicant's assertions in this proceeding. 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 offered in support of the visa petition. *Id* at 591.

The applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The district director noted that no determination had been made as to whether the applicant has demonstrated the required citizenship skills. However, this issue need not be addressed inasmuch as the applicant has not demonstrated that he entered the United States prior to January 1, 1982 and resided continuously since such date.

In addition, the record does not support that the applicant is a class member. An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993). See 8 C.F.R. § 245a.10. In this case the applicant has not alleged, and the record does not support, that he attempted to file a written claim for membership in one of the listed legalization class-action lawsuits.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for LIFE Act legalization has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 245a of the Act. The applicant has failed to meet this burden.

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