

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY



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

U.S. Citizenship  
and Immigration  
Services

L2

[REDACTED]

FILE:

[REDACTED]

Office: HOUSTON

Date:

**JUN 02 2009**

– consolidated herein]

MSC 01 356 62723

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.

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 in Houston, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 to May 4, 1988.

On appeal counsel asserts that the evidence in the record is sufficient to establish that the applicant meets the continuous residence and continuous physical presence requirements for adjustment of status under the LIFE Act.

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 August 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 21, 2001.

In a Notice of Intent to Deny (NOID) dated December 16, 2002, the director indicated that an unacknowledged absence from the United States in 1986, interrupted the applicant’s continuous residence and continuous physical presence in the United States during the statutory period. The applicant was granted 30 days to submit additional evidence.

The applicant submitted a response, however, the director did not review the response and on August 29, 2003, the director issued a Notice of Decision denying the application based on the reasons stated in the NOID.

The record reflects that counsel timely submitted a letter in response to the director’s NOID, which was received at the district office but was not reflected in the decision by the director to deny the application. The AAO will review and evaluate the applicant’s response in this proceeding. It is noted that counsel in his response to the NOID, claimed that the applicant did

not travel outside the United States in 1986 to obtain his passport as noted by the director, but that the applicant's father applied for a passport on behalf of the applicant, that the government of Pakistan issued a passport to the applicant on April 26, 1986, in absentia, and that the applicant's father mailed the passport to the applicant in the United States. Counsel did not submit any documentation in support of his assertion. The AAO will evaluate the application based on all the evidence in the record.

On appeal counsel asserts that the applicant filed a timely response to the NOID, which the director failed to consider in his decision. In counsel's view, the evidence in the record is sufficient to establish that the applicant meets the continuous residence and continuous physical presence requirements for adjustment of status under the LIFE Act. Counsel submits no additional evidence on appeal. The AAO is satisfied that the applicant did file a response to the director's NOID and will evaluate the application based on all the evidence 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, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the country from November 6, 1986 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982, resided continuously in the country in an unlawful status, and was continually physically present in the United States during the requisite periods for LIFE legalization consists of the following:

A letter of employment from [REDACTED] vice president of J.R.'s Delivery Services, dated December 18, 1989, stating that the applicant was employed from November 1980 to August 5, 1983, as a furniture loader/packer.

Photocopied envelopes addressed to the applicant at [REDACTED] Houston, Texas, with postmarks dated in 1986 and 1987.

A letter from [REDACTED] Chairman, Board of Directors of Islamic Education Center, dated July 10, 2001, stating that the applicant has been a member of the organization since 1987.

- A letter from [REDACTED] dated October 4, 2002, stating that the applicant has been his patient from 1986 to the present (2002).

- An undated letter from [REDACTED] of A.L. Williams, stating that he has known the applicant since 1983, and that the applicant has worked for him doing odd jobs.
- A series of letters and affidavits – dated in 1989, 2001, and 2002 – from individuals who claim to have worked with or otherwise known the applicant in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Here the evidence is not probative and credible.

The record reflects that the applicant was issued passport number [REDACTED] by the government of Pakistan on April 26, 1986. On the last page of the passport is a stamp by the United States Consulate in Karachi, Pakistan, dated November 24, 1986, acknowledging receipt of the applicant's visa application. On page 10 of the passport is a copy of an F-1 multiple entry visa issued to the applicant by the United States Consulate in Karachi, Pakistan, on March 24, 1987. On page 11 of the passport is a stamp by the United States Immigration indicating that the applicant was admitted to the United States as an F-1 on March 18, 1988, for duration of status. The applicant indicated on the Form I-687 he filed in 1991 and 2004, that he was absent from the United States only once during the 1980s – a trip to Pakistan from July to August 1987. The applicant did not indicate any other absences from the United States during the 1980s. In the NOID, the director noted that the applicant must have traveled to Pakistan in 1986 to obtain his passport. In response, counsel acknowledged that a passport was issued to the applicant in Pakistan on April 26, 1986, but stated that the applicant did not travel to Pakistan to obtain the passport. Counsel asserted that the applicant's father obtained the passport for the applicant and mailed it to the applicant in the United States. Counsel, however, did not provide any documentation in support of his assertion that the applicant was not in Pakistan at the time the passport was issued. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Contrary to counsel's assertion, the notations on the pages of the passport, such as the visa application and the visa issued by the United States Embassy in Karachi, Pakistan, strongly suggest that the applicant was in Pakistan from at least 1986 through March 1988, when the applicant entered the United States with an F-1 visa.

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence – consisting of letters and affidavits from individuals who claim to have employed, worked with or otherwise known the applicant during the 1980s, photocopied envelopes, as well as a letter from Dr. [REDACTED] stating that the applicant has been his patient from 1986 – is suspect and

non-substantive. Only two individuals claim to have known the applicant in the United States before January 1, 1982. [REDACTED] of J.R.'s Delivery Service, claims to have employed the applicant from November 1980 to August 1983. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) specifies that letters from employers should be on employee letterhead stationery, if the employer has such stationery, and must include: (a) alien's address at the time of employment; (b) exact date of employment; (c) periods of layoff; (d) duties with the company; (e) whether or not the information was taken from official company records; and (f) where such records are located and whether the Service may have access to the records. The affidavit from [REDACTED] did not state the applicant's address during the period of employment, did not state whether the information was taken from company records, where such records are located and whether such records are available for review. In addition, the affidavit from [REDACTED] is not supplemented by any earnings statements, pay stubs or tax records to establish that the applicant was actually employed during the periods indicated. Thus the affidavit of employment and the other documents listed above have little probative value. They are not persuasive evidence of the applicant's continuous residence and continuous physical presence during the requisite periods. Thus, it must be concluded that the applicant has failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status, and was continuously physically present in the country during the requisite periods.

The applicant has submitted contradictory statements and information in support of his application. The applicant has not submitted any objective evidence to explain or justify the discrepancies in the record. Therefore, the credibility and reliability of the evidence is suspect. For example, the record reflects that the applicant completed and filed two Forms I-687 (application for status as a temporary resident) in May 1991 and October 2004 respectively. On the Form I-687 he filed in 1991, the applicant listed the following as his residential addresses and employment in the United States during the 1980s:

Addresses:

- [REDACTED] Houston, Texas, from August 1984 to February 1986; and
- [REDACTED] Houston Texas, from February 1986 to the present.

Employers:

- J.R.'s Delivery Services, loader, from November 1980 to August 1983; and
- A.L. Williams, odd jobs, from 1983 to the present

The applicant did not provide information about his residential address in the United States from 1980 (his alleged first entry into the United States) to 1984. On the Form I-687 he filed in October 2004, the applicant provided the following as his residential addresses and employment in the United States during the 1980s:

Addresses:

- [REDACTED] Houston Texas, from 1980 to 1984;
- [REDACTED], Houston Texas, from 1984 to 1987; and
- [REDACTED] Houston, Texas, from 1987 to 1991.

Employers:

- "JR's" delivery Services, Houston, Texas, loading, from November 1980 to August 1983;
- Short Trip Food Mart, Houston, Texas, Cashier, from August 1983 to December 1983; and
- A.L. Williams, Houston, Texas, technician, from March 1983 to September 1989.

The employment and residential information provided by the applicant on the two Forms I-687 is contradictory to each other and contradictory to the affidavits submitted on behalf of the applicant. For example, the letter from [REDACTED] of A.L. Williams merely stated that he had known the applicant since 1983 and that the applicant did some odd jobs for him. [REDACTED] did not indicate when, how long the applicant worked for him and the nature of the jobs the applicant did for him. The affidavit by [REDACTED] stated that she had known the applicant since 1984, when the applicant worked at Oriental Cleaners & Laundry in Houston Texas from 1984 to 1987. The applicant did not indicate anywhere in his previous statements that he was employed by Oriental Cleaners & Laundry at anytime during the 1980s. The affidavit by [REDACTED] stated that he has known the applicant from 1982 and that the applicant resided at [REDACTED] Bronx, New York, from December 1983 to December 1984. The applicant however, did not indicate that he resided in New York at any time during the 1980s. Rather, the applicant listed two addresses in Houston, Texas as his residence during the same time period.

The inconsistencies in the employment and residential documentation, cast considerable doubt on the applicant's claim that he entered the United States before January 1, 1982, resided continuously in the country through May 4, 1988, and was continuously physically present in the country from November 6, 1986 through May 4, 1988, and undermine the reliability and the credibility of those documentation as credible evidence that the applicant met the requirements for adjustment of status under the LIFE Act. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

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) and 1104(c)(2)(C)(i) of the LIFE Act. 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.