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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
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Services

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[Redacted]

FILE:

MSC 02 241 60741

Office: ATLANTA

Date:

JUN 02 2009

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 Atlanta, Georgia. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant 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.

On appeal counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirements for LIFE legalization.

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 December 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 29, 2002.

In a Notice of Intent to Deny (NOID), dated July 9, 2005, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through May 4, 1988. The applicant was given 30 days to submit additional evidence.

The applicant did not respond to the NOID and on September 28, 2006, the director issued a decision denying the application on the ground that the applicant had not submitted sufficient credible evidence to establish his claim that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988.

On appeal counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel’s view, the documentation in the record is sufficient to establish that the applicant meets the requirements for LIFE legalization.

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 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 documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988, consists of the following:

- A letter of employment from 7 days Food Store in Houston, Texas, dated December 7, 1985, stating that the applicant was employed from February 1982 to November 1985, and was paid \$225.00 per week.
- A letter of employment from C. N. Desai Corporation in Sugar Land, Texas, dated October 14, 1989, stating that the applicant was employed from August 1987 and was paid \$950.00 per month.
- Letters from The Islamic Society of Greater Houston, dated September 13, 1986, inviting the applicant to an activity at the mosque on September 25, 1986, Tip Top Dry Cleaners, in Houston Texas, dated May 19, 1986, responding to the applicant's inquiry for employment, Shadowwoods Apartments in Houston, Texas, dated January 2, 1986, welcoming the applicant to his new apartment, and The International Association of Lions Club, dated June 10, 1984, acknowledging receipt of the applicant's registration for the 1984 International Leo Forum in Dallas, Texas.
- An apartment lease agreement between the applicant and Village of Green Bear (Landlord) dated December 10, 1981 for [REDACTED] Houston, Texas, for a lease term starting from December 15, 1981 to December 14, 1993. The named occupant of the apartment is [REDACTED].
- Various retail and merchandise receipts with handwritten notations of the applicant's name, dated in the 1980s, some with incomplete name and address of the applicant, others did not list an address for the applicant.
- A series of affidavits – dated in 1990 – from individuals who claim to have known the applicant in the United States since the 1980s.
A series of photocopied and regular envelopes addressed to the applicant at the various addresses he claims in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Here, the documentation submitted is not probative or credible.

The employment letters from 7 days Food Store and C. N. Desai Corporation, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i). The letters did not state the applicant's address during the period of employment. Neither letters described the applicant's duties with the company. The letters did not indicate whether the information about the applicant's employment was taken from company records, and whether such records are available for review. Nor were the letters supplemented by earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the employment letters have limited probative value. They are not persuasive evidence that the applicant resided in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The apartment lease agreement between the applicant and Villages of Green Bear does not appear to be genuine. The lease did not include notarial stamp or other official markings to authenticate the date indicated on the lease. Nor was it supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the Elmhurst, New York, address during the years indicated. In fact the lease agreement listed Mr. [REDACTED] as the occupant of the apartment, not the applicant. In view of these substantive deficiencies and possible fraud, the residential lease agreement has no probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The various retail and merchandise receipts, bearing dates from 1983 and 1987, are all handwritten with no stamps or other official markings to authenticate the dates they were written. Most of the receipts do not identify the applicant's complete name and address. The receipt dated March 3, 1983, was prepared on a photocopy of the March 1, 1983 receipt from Airline Wholesale Cash and Carry, which the applicant claims was written on March 1, 1983. None of the receipts date from before January 1, 1982. Given these substantive deficiencies, and possible fraud, the receipts have no probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The various letters dated in 1984 and 1986, which the applicant submitted as evidence of his residence in the United States during the 1980s do not appear to be genuine. Although the letters were dated in 1984 and 1986, the letters are not accompanied by any objective evidence to show that the applicant was in the United States when the letters were written. For example, the letter from The Islamic Society of Greater Houston, dated September 13, 1986, does not bear an address of the applicant. The letter from [REDACTED], dated January 2, 1986, does not bear the complete address of the applicant, nor was it supplemented by a copy of a rental agreement or lease evidencing that the applicant did enter into a contract with the company. The letter from The International Association of Lions Clubs, dated June 10, 1984, was addressed to the applicant at [REDACTED]. The applicant stated his address in the United States during the same period as [REDACTED]. The inconsistency in the address casts considerable doubt on the credibility of the document as evidence of the applicant's residence in the United States during the year 1984, much less during

subsequent years through May 4, 1988, as well as the credibility of the other letters submitted by the applicant as evidence of his residence in the United States during the 1980s. Doubt cast of any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 affidavits from individuals who claim to have known the applicant in the United States during the 1980s, photocopied and regular envelopes some with foreign metered postmarks and other with illegible and postmark dates that appear to have been altered by hand, addressed to the applicant at the various addresses he claims in the United States – is suspect and not credible. For example, the photocopied letter envelopes have illegible postmark dates, and since no original is in the file, it is impossible to determine with any degree of certainty when the envelopes were mailed. Some of the envelopes have foreign metered postage stamps, and others have postmark dates that appear to have been altered by hand. None of the envelopes bear a United States postal date stamps showing that the envelopes were processed in the United States.

As for the affidavits in the record – dated in 1990 – from acquaintances who claim to have known the applicant during the 1980s, they have fill-in-the-blank formats with little personal input by the affiants, who provide few details about the applicant's life in the United States and their interaction with him over the years. None of the affiants claim to have known the applicant before 1985. Thus, the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the analysis of the evidence, 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, 8 U.S.C. § 245A(a)(2)(A). 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.