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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
and Immigration
Services

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FILE:



Offices: NEW YORK CITY

Date:

JUN 03 2009

MSC 01 325 60372

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:



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 New York City. 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 the applicant asserts that the director did not properly evaluate the documentation submitted in support his application. The applicant asserts that the documentation in the record is sufficient to establish that he meets the continuous residence requirement for legalization 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).

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 applicant, a native of Pakistan who claims to have lived in the United States since November 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 21, 2001.

In a Notice of Intent to Deny (NOID) dated May 26, 2005, the director cited inconsistencies between the applicant's testimony at his interview on February 26, 2004 and documentation in the record regarding the time frame of his arrival in the United States and his continuous unlawful residence in the country, as well as a lack of credible supporting documentation. The director indicated that the inconsistencies undermined the applicant's credibility, and granted him 30 days to submit additional evidence.

The applicant timely submitted a response to the NOID with additional information. On August 5, 2005, the director issued a Notice of Decision denying the application on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal the applicant asserts that the director did not properly evaluate the documentation submitted in support his application. The applicant asserts that the documentation in the record is sufficient to establish that he meets the continuous residence requirement for legalization under the LIFE Act. The applicant did not submit additional documentation with the appeal.

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 meets the continuous unlawful residence requirement in the country during the required period consists of the following:

A letter of employment from Pioneer Contracting Company in Brooklyn, New York, dated March 1990, stating that the applicant was employed from August 1982 to March 1985 as a helper and was paid \$200.00 per week in cash.

A letter of employment from [REDACTED] of Golden Waterproofing in Brooklyn, New York, dated March 1990, stating that the applicant was employed from November 1985 to March 1987 as a helper.

A letter of employment from [REDACTED] owner of Parkland Construction in Brooklyn, New York, dated May 1990, stating that he has known the applicant since 1981 when the applicant arrived in the United States and that he employed the applicant as a laborer in his company from 1985 to the present (1990).

- A letter from [REDACTED], president of V.L.M. Inc., D/B/A Reliable Bakery in Brooklyn, New York, stating that he has known the applicant since 1987, that he has employed the applicant on several occasions since 1987, and that the last employment was in 1993.

Three envelopes addressed to the applicant at [REDACTED], in Brooklyn, New York, from individuals in Pakistan, with illegible postmark dates.

- A retail receipt from Queensboro Hardware Company, with handwritten notation of the applicant's name and no address, dated May 3, 1986.

A letter from [REDACTED], Clergyman at the Islamic Seminary Inc. New Jersey dated February 24, 2004, stating that the applicant "is a respected member of our Islamic Center," and an active participant in religious events since early 1980s.

A series of affidavits – dated in 1990, 2001 and 2006 – from individuals who claim to have resided with or otherwise known the applicant since the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

The AAO notes that although the applicant stated that he entered the United States before January 1, 1982 and resided continuously in the country through the period required for legalization under the LIFE Act, other documentation in the record indicates otherwise. For example, on a Form G-325A (Biographic Information) dated August 13, 2001, which the applicant completed under penalty of perjury and submitted with the Form I-485 on August 21, 2001, the applicant indicated his residence outside the United States of more than one year as follows: [REDACTED] from November 1960 (month and year of birth) to October 1987.

At his legalization interview on October 5, 2006, the applicant testified that he entered the United States in November 1981. The applicant submitted a series of affidavits and letters from individuals who claim to have known that he had been residing in the United States since 1981 as well as other documents attesting to his residence in the United States prior to October 1987.

On the Form I-687 (application for status as a temporary residence) completed by the applicant on August 20, 1990, the applicant indicated that he has a son – [REDACTED] born in Pakistan, but did not indicate his date of birth. On the same form, the applicant indicated that he made one trip outside the United States during the requisite period – a trip to Pakistan to visit his family from September 1987 to October 1987. The applicant did not indicate any other absences from the United States during the requisite period. On a prior Form I-485 the applicant filed on July 19, 1999, the applicant indicated the date of birth of his son as August 15, 1988. The applicant stated that he was married in Pakistan on July 18, 1987. The marriage of the applicant in July 1987 and the birth of his son in August 1988, strongly suggest that the applicant was in Pakistan long before his alleged trip to Pakistan in September 1987. The director notified the applicant of the inconsistencies in the record and offered him the opportunity to submit objective evidence to reconcile the inconsistencies, but failed to do so. The applicant did submit a photocopy of a marriage certificate showing that he was married in Pakistan in September 1987 as opposed to July 1987, but failed address the issue of the conception and birth of his child in Pakistan at the same time he allegedly claims to have been residing in the United States. The photocopied marriage certificate has very little evidentiary weight because photocopies can easily be forged and the applicant did not submit the original of the marriage certificate for proper verification.

The record reflects that the applicant submitted conflicting statements and contradictory documentation in support of his application. The applicant provided contradictory information regarding his residential addresses and employers in the United States during the 1980s. On the Form I-687 dated August 20, 1990, the applicant indicated his residential addresses and employment in the United States during the requisite period as follows:

Residence:

- [REDACTED] from October 1981 to February 1983;
- [REDACTED] from February 1983 to September 1987;
- and
- [REDACTED] from October 1987 to May 1990.

Employment:

- Pioneer Construction Company, Brooklyn, New York, helper, from August 1982 to March 1985;
Unemployed, from April 1985 to November 1985;
Golden Water Proofing Company, Corona, helper, from 1985 to March 1987; and
- [REDACTED], helper, from May 1987 to May 1990.

On the Form I-687 date August 25, 1990, the applicant indicated his employment during the requisite period as follows:

- Pioneer Construction Company, Brooklyn, New York, painting, from December 1981 to March 1985;
- Parkland Construction Company, Brooklyn, New York, laborer, from April 1985 to September 1987; and
- [REDACTED] North Hollywood, California, cashier, from October 1987 to May 1990.

On the Form I-687 the applicant filed on September 22, 2005, the applicant indicated his addresses and employment in the United States during the requisite period as follows:

Residence:

- [REDACTED] from October 1981 to February 1983; and
- [REDACTED] from February 1983 to August 1990.

Employment:

- Pioneer Construction Company, Brooklyn, New York, helper, from August 1982 to March 1985;
- Golden Waterproofing Company, Corona, New York, helper, from November 1985 to March 1987; and
- Self-Employed, from May 1987 to August 1991.

The applicant provided contradictory statements about his residential addresses and employment on three separate applications he submitted. The applicant did not provide any objective documentation to reconcile the contradictions, rather the applicant submitted employment documentation that further contradicted the statements he made on the three applications. For example, the applicant submitted a letter of employment from Parkland Construction located in Brooklyn, New York, indicating that the applicant was employed from 1985 to 1990. On the Form I-687 dated August 20, 1990, however, the applicant indicated that he was residing in North Hollywood, California for part of the period he was allegedly employed by Parkland Construction in Brooklyn, New York. Also, the applicant submitted a letter from Reliable Bakery in Brooklyn, New York, indicating that the applicant had worked for the company on several occasions starting in 1987. First, the applicant did not indicate that he worked for the Bakery at any time during the 1980s, and secondly, the applicant was allegedly residing in North Hollywood, California at the same time that he allegedly worked to the Bakery in Brooklyn, New York. The director notified the applicant of the contradictions in his employment and residential history and granted him the opportunity to submit objective evidence to reconcile the contradictions, but failed to do so. The contradictions discussed above and the lack of objective evidence in the record to justify or explain the contradictions, undermines the veracity of the applicant's claim that he entered the United States before January 1, 1982, as well as the overall

credibility of the documentation in the record attesting to the applicant's residence in the United States during the requisite period.

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. *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.*

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 and contradictions in the record. Therefore, the reliability of the remaining evidence – consisting of a series of affidavits – from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s, envelopes addressed the applicant at an address he claimed in the United States, and retail receipt is suspect and not credible. For example, affiant [REDACTED] stated that he resided with the applicant at [REDACTED], North Hollywood, California, from October 1, 1987 to May 1, 1990, however, the applicant did not indicate that he resided at this address during the period indicated by the affiant on the Form I-687 he filed in 2005. Furthermore, affiant [REDACTED] submitted a statement from [REDACTED] resident manager of the apartment complex as evidence that he was residing at the apartment during the requisite period. However, the statement indicated that the affiant [REDACTED] resided at the [REDACTED] apartment from 1988. Therefore it is not possible that the applicant would have resided at the [REDACTED] apartment with affiant [REDACTED] at a time the affiant was not even a resident of the apartment complex. This inconsistency calls into question the credibility of the affidavit as well as the credibility of the other documents submitted by the applicant as evidence of his residence in the United States during the requisite period. As for the employment documentation, neither the authors nor the applicant submitted any earnings statements, W-2 Forms or tax records to show that the applicant was employed during the periods indicated. Thus, it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period for legalization.

Based on the foregoing analysis of the evidence, and the applicant's overall lack of credibility, 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.

The appeal will be dismissed, and the application denied.

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