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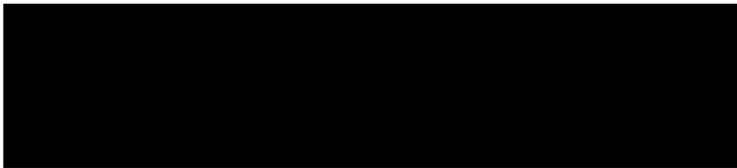
Date: JUN 10 2009

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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.

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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 resided unlawfully in the United States for the requisite period, 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.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on April 16, 2002. The applicant claims to have initially entered the United States on September 30, 1987, and to have departed the United States on only one occasion during the requisite time period – in September 1987 – for the birth of his son, [REDACTED], in Pakistan on September 21, 1987. It is noted that the applicant has provided no evidence that his spouse, [REDACTED] was ever in the United States prior to [REDACTED] birth.

The applicant was interviewed in connection with the Form I-485 on June 24, 2003, and on July 16, 2003, a Request for (additional) Evidence (RFE) was issued. In a Notice of Intent to Deny (NOID) the application, issued on March 14, 2006, the director reviewed the documentation contained in the record and concluded the applicant had failed to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States in an unlawful status from then through May 4, 1988.

A copy of the NOID was mailed to the applicant's attorney of record at that time, [REDACTED] but was returned as undeliverable. Subsequently, the applicant's current counsel submitted a (new) Form G-28, Notice of Entry of Appearance as Attorney or Representative, and responded to the NOID on or about April 9, 2006. In response, counsel submitted a letter stating that the passage of time had "played a crucial role in the promulgation of this matter," and that if the documentation submitted by the applicant had been reviewed in October 1987, the evidence submitted would have been current at that time. No new documentation in support of the application was submitted in response to the NOID.

On August 7, 2006, in a Notice of Decision (NOD), the director denied the application on the grounds stated in the NOID. The director also noted in his decision that post-marked envelopes submitted by the applicant in connection with his application had been analyzed and reviewed by a Forensic Document Examiner, and were determined to be fraudulent.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Counsel filed a timely appeal from the denial decision on September 6, 2006, and submitted a brief in support of the appeal on October 5, 2006. At the time of filing the appeal, counsel requested documentation from the applicant's file under the Freedom of Information Act (FOIA). The record indicates that counsel's FOIA request was responded to on March 25, 2008. To date, counsel has not submitted any new evidence or statement refuting the director's finding that the applicant submitted fraudulent documentation in support of his application.

On appeal, counsel again asserts that due to the passage of time, updating evidence previously provided by the applicant is difficult, if not impossible. Counsel states that the failure of United States

Citizenship and Immigration Services (USCIS) to adjudicate the application in the early 1990's gives "rise to this scenario" - not any action taken by the applicant. Counsel further states that the applicant has no physical evidence by which to provide a response to the allegation of fraud set forth in the director's denial decision and comments that it is curious that no forensic testing had been done for the three years that the documents were in USCIS possession. Again, no new documentation in support of the application was submitted with counsel's letter on appeal.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed. Without specifically identifying any errors on the part of the director (other than timeliness of adjudication), the assertions of counsel in response both to the NOID and the NOD are insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted contained in the record and thoroughly addressed by the director.

The applicant has failed to specifically address the well-founded reasons stated for denial and has not provided any new evidence on appeal. The appeal must therefore be summarily dismissed.

It is noted that, beyond the decision of the director, the applicant has failed to submit evidence of his identity pursuant to 8 C.F.R. §245a.2(d)(1).

It is further noted that a Form I-130, Petition for Alien Relative, filed on the applicant's behalf by [REDACTED] to qualify the applicant as the brother of a United States citizen, was denied due to abandonment on June 22, 1999.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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