



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L2



FILE:



Office: GARDEN CITY

Date:

MAR 06 2009

MSC 02 240 63715

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 Garden City, New York. The decision 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 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 take into consideration the applicant's disability that may have caused his testimony to be misinterpreted and thereby misunderstood by the interviewing officer. In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement 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 the Pakistan who claims to have lived in the United States since 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 28, 2002.

In a Notice of Intent to Deny (NOID), dated June 26, 2007, the director cited inconsistencies between the applicant’s testimony at his LIFE legalization interview on May 6, 2004, the affidavits in the record and the Form I-687 (application for status as a temporary resident) the applicant filed in 1990. The director indicated that these inconsistencies, together with substantive deficiencies applicable to all of the affidavits in the record, undermined the credibility of the applicant’s claim of continuous residence in the United States during the requisite period for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant submitted a personal affidavit asserting that the inconsistencies noted by the director between his testimony and documentation in the record may be due to misunderstanding and miscommunication by his interpreter during the interview because the applicant is deaf and dumb and only communicates through sign language. The

applicant also offered some explanations for the other evidentiary deficiencies and inconsistencies noted by the director.

On August 2, 2007, the director issued a Notice of Decision denying the application on the ground that the information submitted in response to the NOID was insufficient to overcome the grounds for denial.

On appeal, counsel asserts that the director did not take into consideration the applicant's disability that may have caused the interpreter to misinterpret his testimony to the interviewing officer.¹ In counsel's view, the documentation in the record is sufficient to establish that the applicant meets the continuous residence requirement for LIFE legalization. Counsel submits no 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).

There is no contemporary documentation from the 1980s that shows the applicant to have resided or been physically present in the United States during the requisite periods for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

The record reflects that on the Form I-687 the applicant filed in 1990, he indicated that he last entered the United States on December 22, 1987, and that he made one trip outside the United States in the 1980s – a trip to Canada from September 10, 1987 to December 22, 1987. The applicant did not indicate any other trip outside the United States in the 1980s. The record also reflects that the applicant was issued a B-2 non-immigrant visa at the United States Embassy in Islamabad, Pakistan on May 24, 1989, which the applicant used to enter the United States on June 9, 1989. The applicant's entry in 1989 is corroborated by a copy of a Form I-94, arrival/departure record in the file showing that the applicant was admitted into the United States through New York City on June 9, 1989 as a B-2 visitor. The director notified the applicant of this inconsistency in her NOID. In response to the NOID, however, the applicant stated that he traveled to Pakistan in 1989 due to the death of his father. The applicant did not submit any objective evidence to rebut or reconcile the discrepancy. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to

¹ The record reflects that the applicant is deaf and dumb and communicates only by sign language. The AAO will take this into consideration and will analyze the case based only on documentation in the record.

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.*

The only 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 during the requisite period for LIFE legalization consists of four similarly worded affidavits from acquaintances – dated in 1990 and 2002 – who claim to have known the applicant in the United States during the 1980s. The affidavits provide little information about the applicant's life in the United States and their interactions with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. Only one affiant – [REDACTED] claims to have known the applicant before January 1, 1982. Affiant [REDACTED] only provided information about the applicant's alleged travel to Canada in 1987, and nothing about the applicant's residence in the United States during the 1980s. In view of these substantive shortcomings, 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.

Beyond the decision of the director, the applicant acknowledged on his Form I-687 and accompanying Affidavit for Determination of Class Membership in [LULAC] v. INS, both filed on March 29, 1990, that he was absent from the United States on a visit to Canada from September 10 to December 22, 1987 – a total of 103 days. This absence from the United States far exceeded the 45-day maximum for a single absence prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being." The applicant has not established that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from Canada in 1987 within the 45-day period allowed in the regulation. Thus, the applicant's trip to Canada in 1987 would have interrupted his continuous residence in the United States. On this ground as well, therefore, the applicant has failed to establish his eligibility for legalization under the LIFE Act.

For the reasons discussed above, 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.