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

U.S. Citizenship
and Immigration
Services

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FILE:

MSC 01 331 60147

Office: NEW YORK CITY

Date:

MAR 27 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:

SELF-REPRESENTED

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 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.

On appeal the applicant asserts that the director did not properly evaluate the evidence of record, that the director did not articulate why he found the affidavits not credible, and that he has submitted sufficient credible evidence 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).

“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 July 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 27, 2001.

In a Notice of Intent to Deny (NOID), dated February 8, 2008, the director cited inconsistencies between the applicant’s testimony at his LIFE legalization interview on March 21, 2002, and documentation in the record regarding the applicant’s initial entry into the United States, and his continuous residence in the country. The director noted that some of the affidavits submitted in support of his claim appear to be fraudulent, and undermines the veracity of his claim entry into the United States before January 1, 1982 and his continuous residence in the country through the period required for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID and on March 14, 2008, the director issued a Notice of Decision denying the application based on the reasons stated in the NOID.

The applicant filed a timely appeal. On appeal the applicant offers some explanation for the evidentiary deficiencies cited in the NOID, asserts that the director did not properly evaluate the evidence in the record, did not articulate why he found the affidavits not credible and reiterates his claim that he submitted sufficient credible evidence to establish that he meets the continuous residence requirement for legalization under the LIFE Act. The applicant submits no additional evidence 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 entered the United States before January 1, 1982, resided continuously in an unlawful status through May 4, 1988, consists of the following:

- A letter of employment from [REDACTED] in Richmond Hill, New York, dated August 6, 2001, stating that the applicant was employed as a painter from 1982 to 1988, and was paid a weekly salary of \$220.00
A letter of residence from [REDACTED] in Bronx, New York, dated August 14, 2001, stating that the applicant was a tenant at their building on [REDACTED] Bronx, New York, from August 1981 to April 1984.
- A letter of residence from [REDACTED] in Bronx, New York, dated August 16, 2001, stating that the applicant was a tenant at their building on [REDACTED] Bronx, New York, from June 1984 to April 1989.
Affidavits from [REDACTED] and [REDACTED] sworn to on August 10, 2001, stating that they have known the applicant for the last 19 years and that they have been friends with the applicant since then.
- An affidavit by [REDACTED] – the applicant's wife – dated May 19, 1994, provided the date of her marriage to the applicant and listed the names and date of births of the applicant's seven children.

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 file contains documentation that calls into question the veracity of the applicant's claim that he entered the United States in July 1987, resided continuously in the country through May 4, 1988, and made just one trip outside the United States to Pakistan from October 1, 1987 to November 5, 1987. The record reflects that on the Form I-485, the applicant stated that he has seven children, all born in Pakistan with the following dates of birth – April 15, 1970; December 24, 1971; August 20, 1975; August 5, 1979; August 2, 1988; May 13, 1991; and September 27, 1992. The affidavit from the applicant's wife however, listed the following dates of birth for the same children – April 15, 1970; December 24, 1971; August 20, 1975; May 8, 1979; October 23, 1983; May 5, 1986; and September 9, 1987. On the Form I-687 (application for status as a temporary resident) dated March 25, 1990, the applicant stated that he has four children but did not state their dates of birth. The applicant was notified of the inconsistencies in the NOID and was offered the opportunity to provide rebuttal information but failed to do so. The inconsistencies noted above strongly suggest that the applicant must have been in Pakistan during conception and or deliveries of his children and call into question the veracity of his claim that he resided continuously in the United States from before January 1, 1982 through May 4, 1988, except for a brief one month trip to Pakistan in the fall of 1987. It is further noted that the applicant did not list any other absences from the United States during the 1980s.

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.* 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 offered by the applicant is suspect.

The employment letter from [REDACTED] does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. The director, in the NOID, noted discrepancy between the date [REDACTED] was registered and the dates the applicant claimed to have begun work there. According to records from the New York State Department of State, Division of Corporations, [REDACTED] was registered in New York City on August 25, 1987. Thus, while the applicant claims to have begun work at the company in 1982, the record shows that the company did not appear to have been registered before August 25, 1987, at the earliest. Therefore it is highly improbable that the applicant worked for the company during the time specified and calls into question the credibility and reliability of the letter as credible evidence of the applicant's residence in the United States during those years. As previously stated, doubt cast on any aspect of the applicant's evidence will lead to reevaluation of other evidence in the record. *See Matter of Ho, id.* For the reasons discussed above, the AAO determines that the

employment letter has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

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 rented apartment to or otherwise known the applicant in the United States during the 1980's is suspect and non substantive. For example, Estela [REDACTED] claims that the applicant resided at [REDACTED], Bronx, New York, from June 1984 to April 1989; however, the applicant listed his address on the Form I-687 as [REDACTED]

Bronx, New York, for the same time period. On the Form I-687, the applicant listed his employer during the 1980s as "construction company, 'labour,' from August 1981 to May 1989." He however, submits a letter from [REDACTED], indicating employment from 1982 to 1988 which, as discussed above appears to be fraudulent. The affidavits from [REDACTED] and [REDACTED] is not substantive because it provided no details about the applicant's life in the United States during the 1980s, nor did it provide any details about the extent of their relationship with the applicant during the years they claim to have known him. Thus, it must be concluded that the applicant has failed to establish that he entered the United States before January 1, 1982 and continuously resided in the United States in an unlawful status during the statutory period for legalization under the LIFE Act.

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) 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.