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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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FILE:

MSC 01 359 61885

Offices: NEW YORK CITY

Date: NOV 20 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. 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.

Perry J. Rhew  
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 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 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 March 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 24, 2001.

In a Notice of Intent to Deny (NOID) dated November 13, 2007, the director indicated that the applicant has failed to submit sufficient credible evidence in support of his application. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID and on January 10, 2008, the director issued a Notice of Decision denying the application on the grounds stated in the NOID.

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 requirement for legalization under the LIFE Act. Counsel does 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 that the applicant submits in support of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful for the duration of the requisite period consists of the following:

A copy of a one-year residential lease agreement between [REDACTED] and the applicant for [REDACTED] dated June 8, 1982.

- Various merchandise and retail receipts issued to the applicant bearing dates in 1981, 1982 and 1983.

A letter of employment from the president of [REDACTED] in Brooklyn, New York, dated August 13, 1992, stating that the applicant was employed from August 1986 to February 1990, and was paid \$350.00 per week.

- A series of affidavits dated in 1990 and 2001, from individuals who claim to have known the applicant resided in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The residential lease agreement between [REDACTED] and the applicant for [REDACTED] dated June 8, 1982, beginning June 10, 1982 and ending June 9, 1983, do not bear a date stamp of a notary authenticating the date it was signed. The lease agreement is not accompanied by any rental receipts or utility bill, to show that the applicant resided at the address during the period indicated. Even if the AAO accepted the lease agreement as evidence of the applicant's residence in New York from June 1982 to June 1983, it is not sufficient evidence to establish that the applicant resided in the United States from before January 1, 1982 and beyond through May 4, 1988. Thus, the residential lease agreement has limited probative values as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letters from the two businesses dated in 1989 and 1992 – [REDACTED] in Brooklyn, New York, stating that the applicant was employed from April 1981 to July 1986, and [REDACTED] in Brooklyn, New York, stating that the applicant was employed from August 1986 to February 1990, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address during the periods of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letters were not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. In view of the substantive deficiencies, the employment documents have limited 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, as required for legalization under the LIFE Act.

The various merchandise and retail receipts dated 1981, 1982, and 1983, do not appear to be genuine. For example, a copy of a loan agreement from Cape Cod Women's Credit Union dated April 18, 1983, indicating the applicant as a co-borrower do not bear the applicant's signature, thereby calling into question the credibility of the document. The car rental receipt Global car rental in Brooklyn, New York dated September 19, 1981, indicated that the applicant rented a car from September 19, 1981 through September 21, 1981. The National Bank of Pakistan, New York City indicates that the applicant requested a money transfer from his account in New York to a beneficiary in Pakistan. These two receipts may show that the applicant completed the transactions in September 1981 and May 1982, but do not establish that the applicant continuously resided in the United States from 1981 through 1982, much less for the entire requisite period through May 4, 1988. Therefore the receipts have little probative value as

credible evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the affidavits from individuals who claim to have known the applicant resided in the United States during the 1980s, they have minimalist or fill-in-the-blank formats with very little input by the affiants. The affiants provided very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The affiants claim to have known that the applicant resided in the United States during the 1980s, yet there is no indication from their affidavits that they have direct personal knowledge of the events and circumstances of the applicant's residency in the United States during the requisite period. The affiants did not provide documents to establish their own identities and residence in the United States during the requisite period. Additionally, the affidavits are not 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. For all the reasons discussed above, the AAO finds that 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 foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish by a preponderance of the evidence 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.