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Offices: NEW YORK CITY

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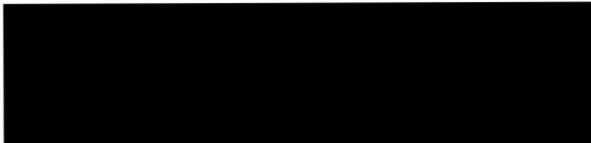
IN RE: Applicant:



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 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 3, 2001.

In a Notice of Intent to Deny (NOID) dated May 7, 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 timely responded to the NOID. On May 26, 2007, the director issued a Notice of Decision denying the application on the grounds that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

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.

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 a photocopy of a residential lease agreement, letters and affidavits from individuals who claim to have employed or otherwise known the applicant in the United States during the 1980s as well as a copy of a service receipt purportedly issued to the applicant on January 14, 1983 for work done at his apartment.

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

The record includes two photocopied residential lease agreements between (1) [REDACTED] as the Landlord and the applicant as the Tenant for [REDACTED] beginning November 1, 1980 and ending October 31, 1985, and (2) [REDACTED] as the Landlord and the applicant as the Tenant for [REDACTED] beginning January 1, 1986 and ending December 1987. The lease agreements dated November 1, 1980, and January 1, 1986, respectively do not bear notarial stamps or official date stamps to authenticate the dates they were written. The lease agreements are not supplemented by copies of rental receipts, utility bills, or other objective documentation to show that the applicant actually resided at the Miami, Florida, and Elmhurst, New York addresses during the years indicated. The original documents are not in the file for proper verification. In view of these substantive deficiencies, the residential lease agreements have little probative value. They are not persuasive evidence that the applicant continuously resided in the United States from before January 1, 1982 through May 4, 1988.

The record includes various photocopied envelopes and photocopied post cards addressed to the applicant at the various addresses he claims in the United States. Some of the photocopied envelopes and postcards have illegible postmark dates while others bear foreign postmark dates that appear to have been altered by hand. Neither of the photocopied envelopes nor the postcard bear United States Postal Service markings or official date stamps to show that the envelopes and postcards were processed in the United States before delivery to the applicant at the addresses indicated. Thus, the photocopied envelopes and postcards have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The record includes employment letters from three businesses (1) [REDACTED] in Miami, Florida, stating that the applicant was employed from November 1, 1980 to June 30, 1984, as an attendant; (2) [REDACTED] in Long Island City, New York, stating that the applicant was employed from January 1, 1986 to November 20, 1987; and (3) [REDACTED] in North Miami, Florida, stating that the applicant was employed from January 1, 1988 to December 31, 1990.

The employment letters listed above 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. Additionally, [REDACTED] and [REDACTED] did not specify the applicant's duties and responsibilities at the companies. In view of these substantive deficiencies, the employment letters 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.

As for the copy of a notarized letter and affidavit in the record from individuals who claim to have known the applicant during the 1980s, they have minimalist or fill-in-the-blank formats with very little input by the authors. The notarized letter from [REDACTED] claims that he has met and known the applicant while he was a resident in Miami, Florida, but did not specify when he met the applicant or how long he has known the applicant. The authors provided very few details about the applicant's life and the nature and extent of their interactions with the applicant over the years. The authors did not submit documents to establish their own identities and residence in the United States during the requisite period. Additionally, the notarized letter and affidavit are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationships with the applicant in the United States during the 1980s. For all the reasons discussed above, the AAO finds that the letter and affidavit 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.