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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:



Office: NEW YORK CITY

Date:

OCT 14 2009

MSC 02 240 63880

MSC 05 200 23050 - APPEAL

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 initially denied by the director in New York City, and the matter came before Administrative Appeals Office (AAO) on appeal. The AAO determined that the applicant had overcome the basis of denial and remanded the matter for a new decision. The director subsequently denied the application again and certified this decision for review by the AAO. This certified decision denying the application will be affirmed and the appeal will be dismissed.

The director initially denied the application based upon the determination that the applicant had failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act. The AAO remanded the matter for further adjudication.

In the subsequent certified decision, the director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

In response to the certified decision, counsel reiterated the applicant’s claim of residence in this country for the requisite period and asserted that the applicant had submitted sufficient credible evidence in support of such claim.

An applicant for permanent resident status under the LIFE Act must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

The applicant 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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 amenability to verification. 8 C.F.R. § 245a.12(e).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.* At 80. 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. *Id.*

Even if the director has some doubt as to the truth, if the petitioner 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on March 14, 1992. Subsequently, the applicant filed his Form I-485 LIFE Act application on February 1, 2002.

In support of his claim of residence in the United States for the requisite period, the applicant submitted a letter of employment, allegedly from two former employers, and affidavits of residence from individuals who claim to have known the applicant resided in the United States during the 1980s.

The director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status during the period in question. Additionally, the director cited to inconsistencies between the applicant’s testimony that he entered the United States before January 1, 1982 and has resided continuously in the country for the requisite period, and other documents in the record showing that the applicant fathered two children in Pakistan at the same time he claimed he was physically in the United States. The director denied the Form I-485 LIFE Act application on September 15, 2007.

On appeal, counsel reasserts that the applicant has submitted sufficient credible evidence of his continuous residence in the United States for the duration of the requisite period, but did not address the inconsistencies cited by the director in the Notice of Intent to Deny (NOID) dated July 18, 2007, or the Notice of Decision (NOD) dated September 15, 2007.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The AAO determines that the applicant has failed to meet this burden.

The record reflects that the applicant has submitted conflicting information regarding his entry and continuous residence in the United States during the requisite period. At his interview on March 31, 2006, the applicant indicated that he first entered the United States on January 15, 1981. The applicant did not submit any evidence to establish such entry.

On a prior Form I-687 dated April 26, 1990, the applicant indicated that he last came to the United States on January 15, 1981, and resided continuously in the country except for a brief trip to Pakistan from October 4 to November 4, 1987. The applicant did not indicate any other trips outside the United States during the 1980s. On the same Form I-687, the applicant indicated that his son [REDACTED] was born in Pakistan on April 4, 1982, and his son [REDACTED] was born in Pakistan on December 8, 1983. As the applicant's only trip outside the United States was from October to November 1987, the applicant has failed to account for the conception and birth of his two children in Pakistan in April 1982 and December 1983. The applicant has not provided any evidence and the record does not contain any documentation showing that the applicant's wife was residing in the United States during the 1980s. Therefore, the applicant must have been in Pakistan at the time of the conception of his two children and not residing in the United States as he claimed.

The inconsistencies in the record call into question the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period. 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. *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.*

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for legalization. For someone claiming to have lived in the United States since January 1, 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 includes a letter of employment from [REDACTED] in Manorville, Long Island, New York, dated March 27, 1990, stating that the applicant was employed from March 1, 1981 to January 31, 1986, as a harvest worker picking tomatoes, eggplants, peppers, potatoes and cabbage. [REDACTED] stated that the applicant was paid \$100.00 per month and was provided room and board at the farm. Also in the record is an affidavit from [REDACTED] of Metro West End Marketing Corporation in Westhampton Beach, New York, sworn to on April 4, 1990. [REDACTED] stated that the applicant was employed from 1986.

The employment letters listed above do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because while the letter from [REDACTED] provided a description of the applicant's duties and responsibilities, the affidavit from [REDACTED] did not. The affidavit from [REDACTED] did not indicate whether the information about the applicant's employment was taken from company records. Both authors did not indicate where the records are kept and whether

such records are available for review. The employment documents 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. Thus, the employment documents have little probative value. They are not persuasive evidence that the applicant resided in the United States before January 1, 1982 through the requisite period.

As for the affidavits 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 affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – 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 affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants’ personal relationships with the applicant in the United States during the 1980s. In addition, some of the affidavits have questionable credibility. While the affidavits from [REDACTED] and [REDACTED] were supposedly signed on April 4, 1990 and April 3, 1990, respectively, the affidavits were not notarized until July 23, 2001 by the same notary. This information casts considerable doubt as to when the affidavits were authored and the credibility of the documents. Furthermore, the originals of these two affidavits are not in the file for proper verification. As previously stated, doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho, id.* For the reasons discussed above, the employment documents 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 the requisite period.

Based on the foregoing analysis of the evidence, the AAO concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

ORDER: The certified decision denying the application is affirmed and the appeal is dismissed. This decision constitutes a final notice of ineligibility.