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



MSC 02 105 60351

Offices: NEW YORK CITY

Date:

OCT 23 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 June 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on January 13, 2002.

In a Notice of Intent to Deny (NOID) dated September 27, 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 and submitted additional documentation. On February 5, 2008, 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. 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 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 merchandise receipt purportedly issued to the applicant on April 15, 1983.

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

The record includes (1) an affidavit of employment signed by [REDACTED] at Brooklyn Medical Center in Brooklyn, New York, dated February 20, 1990, attesting that the applicant was employed as a general duty worker from July 11, 1981 to December 28, 1982; and (2) an affidavit of employment signed by [REDACTED] at Royal Construction Company in Brooklyn, New York, dated February 27, 1990, attesting that the applicant has been employed since April 1984 as a day laborer whenever needed.

The employment documents 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, the affidavit from Royal Construction Company did not specify any periods of layoff which is evident because the author indicated that the applicant worked as "a day laborer whenever needed." For the reasons discussed above, 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 record includes a letter from [REDACTED] of Awan Medical Center in Brooklyn, New York, dated January 15, 1990, stating that the applicant has been under his care since November 10, 1981, that the applicant has been seen in his office for various minor medical ailments, and that the last visit was on October 9, 1989, for back pains. The letter did not indicate the applicant's address at any time during the period 1981 through 1989 and did not specify the source of information about the applicant. The letter is not accompanied by any medical records confirming that the applicant was a patient at the center, that he was seen at the center during the period indicated on the letter, and did not indicate the nature and the frequency of the visits. Most importantly, the author did not submit any document to establish his identity and residence in the United States during the requisite period. In view of these substantive shortcomings, the letter from [REDACTED] has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The record also includes a series of affidavits from individuals who claim to have known the applicant in the United States during the 1980s. The affidavits 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 residence in the United States. 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.

As for the merchandise receipt dated April 15, 1983, from Amit International, Inc. in Woodside New York, it has handwritten notation of the applicant's name and no address. There is no official date stamp or other markings to authenticate the date it was written. Even if the AAO accepted the receipt as evidence that the applicant was present in the United States in April 1983, it is not sufficient credible evidence to establish that the applicant continuously resided in the United States for the entire 1983 much less for the duration of the requisite. Thus, the merchandise receipt is of little probative value as evidence of the applicant's continuous 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.