



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L2

FILE:

MSC 03 241 61117

Offices: GARDEN CITY

Date: **OCT 30 2009**

IN RE: Applicant:

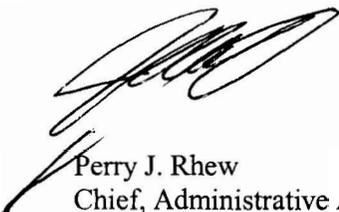
APPLICATION:

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 Garden City, New York. 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 November 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 29, 2003.

In a Notice of Intent to Deny (NOID) dated July 9, 2007, the director indicated that the applicant has failed to submit sufficient credible evidence in support of his application. The director cited inconsistencies between the applicant's own statement and some of the documentation in the record regarding his initial entry into the United States. The applicant was granted 30 days to submit additional evidence.

The applicant failed to respond to the NOID or submitted additional documentation. On August 20, 2007, the director issued a Notice of Decision denying the application based on the reasons 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.

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 a photocopy of a one-year residential lease agreement between [REDACTED] as the Landlord and the applicant as the Tenant for [REDACTED], beginning November 1980 and ending December 1981. The agreement was signed by both parties on November 1, 1980. The photocopied lease agreement does not appear to be genuine for the following reasons: (1) the agreement was purportedly entered into and signed by the applicant and [REDACTED] on November 1, 1980, but the applicant did not claim to enter the United States until either January or November 1981. (2) The lease indicating that the applicant resided at [REDACTED], from November 1980 to December 1981 is contrary to the residential information provided by the applicant on a Form I-687 (application for status as a temporary resident) he completed on March 3, 1990. According to the form, the applicant indicated his address as [REDACTED] from January 1981 to December 1982. Additionally, the lease agreement did not include a notarial stamp or other official markings to authenticate the date indicated on the lease. Nor is the document supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the Bronx, New York, address during the period indicated.

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.*

In view of these substantive deficiencies and the apparent inconsistencies, the lease agreement has 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.

The record also includes a notarized letter and an affidavit from two individuals who claim to have known the applicant in the United States during the 1980s. The documents have minimalist formats with very little input by the authors. The notarized letter from [REDACTED] claims to have known the applicant since November 1980 when he rented an apartment to the applicant. The affidavit from [REDACTED] attests that the applicant is his close friend and that he knew the applicant resided at [REDACTED] from January 1981 to December 1982. [REDACTED] did not specify when he met the applicant and for how long he has known the applicant. [REDACTED] did not indicate the source of his knowledge that the applicant resided at the [REDACTED] apartment from January 1981 to December 1982. The letter and the affidavit is contrary to the applicant's prior statements that he first entered the United States in November 1981. As previously indicated doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* Thus, the letter and the 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.

As discussed above, the applicant has provided conflicting statements and documentation in support of his application. The applicant has not provided any objective evidence to justify or reconcile the contradictions. Therefore, the remaining evidence consisting of a copy of a service receipt from SIMA Contracting Company dated January 14, 1983, is suspect and not credible. It must therefore be concluded that the applicant has failed to establish his continuous unlawful residence in the United States for the requisite period.

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.