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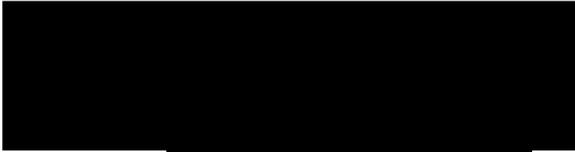


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

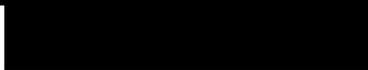
U.S. Citizenship
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FILE:



Offices: GARDEN CITY

Date: MAR 04 2010

MSC 02 044 60530

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. The decision 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. Counsel requested a copy of the Record of Proceedings (ROP) and indicated that he will submit a brief/evidence within 30 days of receiving the ROP. The record reflects that the ROP was processed on May 19, 2009. The record also reflects that counsel submitted a brief following receipt of the ROP but did not submit additional evidence of the applicant's continuous residence in the United States with his brief. The AAO will consider the record as complete and will adjudicate the application based on the evidence in the record.

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 May 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on November 13, 2001.

In a Notice of Intent to Deny (NOID) dated June 24, 2007, the director indicated that the some of the documents submitted by the applicant in support of his application contradicted prior statements he made on his applications and undermined the credibility and the veracity of his claim. The director granted him 30 days to submit rebuttal or additional evidence.

The applicant responded and on August 6, 2007, the director issued a Notice of Decision denying the application on the grounds that the information and documentation submitted in rebuttal are 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 did 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 submitted by the applicant in support of his claim that he meets the continuous unlawful residence requirement in the country for the required period consists of letters and affidavits from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s.

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

The AAO notes that although the applicant claims that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period for legalization under the LIFE Act, other documentation in the record indicates otherwise. The reflects that on the Form I-687 (application for status as a temporary resident) the applicant completed on April 24, 1990 as well as the accompanying affidavit, the applicant indicated that he entered the United States in May 1981, resided continuously in the country except for one brief trip to Pakistan from June 24, 1987 to August 15, 1987. On the same form, the applicant indicated that his daughter – [REDACTED] – was born in Pakistan on August 29, 1984, and another daughter – [REDACTED] – was born in Pakistan on March 30, 1986. The applicant did not indicate that his wife was residing in the United States with him at anytime during the 1980s. The trip to Pakistan in 1987 did not account for the conception and the birth of the applicant's children in 1984 and in 1986. Therefore, the birth of the applicant's daughters in Pakistan strongly suggests that the applicant must have been in Pakistan during the time the children were conceived.

On a Form G-325A (Biographic Information) dated October 26, 2001, which the applicant submitted with the Form I-485, the applicant indicated that he and his wife got married in Lahore, Pakistan on August 24, 1983. The applicant did not indicate on the current application that he was outside the United States in 1983 to account for his marriage in Pakistan. A hard copy of the applicant's Pakistani passport in the file indicated that the applicant had previously traveled on passport # [REDACTED] dated "2-9-85" issued in Karachi, Pakistan. On the current application, the applicant did not indicate a trip outside the United States to Pakistan in 1985 that would have account for the visa issue date of February 25, 1990. Finally, the record includes a B-1/B-2 multiple entry visa issued to the applicant at the United States Embassy in Karachi, Pakistan, on February 25, 1990, which the applicant used to enter the United States on March 4, 1990.

The inconsistencies discussed above and the lack of objective rebuttal evidence calls into serious 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 May 4, 1988. 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.*

The record includes (1) a letter signed by [REDACTED], dated May 8, 1986, stating that the applicant was employed from June 17, 1981 to May 8, 1986, as a painter; and (2) a letter signed by [REDACTED] who identified himself as the president of [REDACTED] Transportation Services in Anaheim, California, dated October 10, 1989, stating that the applicant was employed from July 20, 1986 to October 8, 1989, as a salesman.

The 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. While [REDACTED] of [REDACTED] Transportation Services identified his position and the location of the company, [REDACTED] Washington did not identify the location of the company, his position in the company or the authority he possesses to author the letter. The letters are 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 letters have limited probative value. They are not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The record also includes a copy of a three year residential lease agreement dated May 30, 1981, between the applicant and [REDACTED] as tenants and [REDACTED] as the Lessor, for [REDACTED] starting from June 1, 1981 and ending on May 31, 1983. The lease agreement does not appear to be genuine. The agreement listed the applicant and [REDACTED] as tenants, however, the applicant submitted a letter from [REDACTED] stating that the applicant resided with [REDACTED] at the same apartment listed above from 1981 to 1986, and that the applicant paid [REDACTED] \$140.00 per month as the applicant's own share of the rent. Furthermore, the lease agreement does not include notarial stamp or other official marking to authenticate the date indicated on the lease. Nor is the lease agreement supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the [REDACTED] address during the years indicated. In view of the deficiencies discussed above, the residential lease agreement has limited probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the affidavits in the record from individuals who claim to know the applicant in the United States 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 affiants do not have a direct personal knowledge of the events and circumstances of the applicant's residence in the United States. The affiants did not submit documentation to establish their own identities and residence in the United States during the requisite period. 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. Thus, it must be concluded that the applicant has failed to establish that he meets the continuous unlawful residence requirement under the LIFE Act.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has 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, 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.