

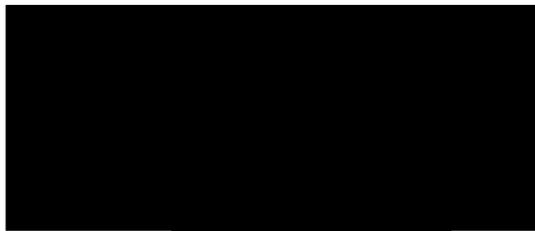
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



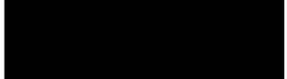
U.S. Citizenship
and Immigration
Services

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FILE:



Office: BALTIMORE Date:

MAR 30 2010

MSC-02-143-65804

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 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, Baltimore, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-485, application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The director determined that the applicant was scheduled to appear for an interview on three separate occasions, on December 3, 2002, March 4, 2003, and August 12, 2003. On each occasion, counsel for the applicant submitted to United States Citizenship and Immigration Services (USCIS) a letter requesting a rescheduling of the interview. The request to reschedule was accommodated twice. On the third occasion, the director concluded that the applicant had abandoned his application and it was denied on September 10, 2004.

On appeal, the applicant asserts that he submitted a proper LIFE Act application and that he did not abandon his case.

If an applicant fails to appear for two scheduled interviews, the application shall be denied for lack of prosecution. 8 C.F.R. § 245a.19(a).

In this case, the applicant was scheduled to be interviewed on three occasions and failed to appear. He did, through counsel, request that his interview be rescheduled; however, given the multiple opportunities that USCIS provided, the director's decision to deny the application as abandoned was correct.

Beyond the decision of the director, the applicant failed to establish his continuous residence in the United States throughout the requisite period. The AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). 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 AAO has reviewed the entire record of proceedings and finds that the applicant has failed to meet his burden.

An applicant for permanent resident status 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. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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 amenability to verification. 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, "[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 or petition.

The applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States throughout the requisite period. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and letters, an airline ticket and one envelope. The AAO has reviewed each document to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains affidavits from [REDACTED] and [REDACTED]. While the affiants indicate that they met the applicant during the relevant period and they provide his address for certain years during the relevant period, their statements lack sufficient detail to be considered probative. For example, none of the affiants indicate how they date their initial acquaintance with the applicant or how frequently they saw the applicant during the relevant period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the affiants provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant’s residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Most affiants indicate only where the applicant lived. Therefore, they have little probative value.

The record also contains employment affidavits from [REDACTED] and [REDACTED]. The first employer indicates that the applicant worked for the restaurant as a kitchen helper from February 1981 until November 1986. The director of [REDACTED] indicated that the applicant was employed from December 1986 until October 1988. These letters fail to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant’s address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether United States Citizenship and Immigration Services (USCIS) may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer’s willingness to come forward and give testimony if requested. The statements noted above do not include much of the required information and can be afforded minimal weight as evidence of the applicant’s residence in the United States for the duration of the requisite period.

The record of proceedings also includes a letter from [REDACTED], who indicates that she treated the applicant on nine separate occasions throughout the relevant period. However, as the director noted, the applicant failed to submit any medical records to substantiate the letter from [REDACTED], and the telephone

number provided on the affidavit is not in service, therefore, the information contained in the affidavit is unverifiable.

The record also contains an airline ticket from [REDACTED] in the applicant's name, for a flight from New York to Pakistan in May 1987; along with an envelope date stamped 1985. These documents provide some evidence of the applicant's presence in the United States on those dates.

However, there are multiple unexplained inconsistencies in the record. First, as the director noted, the applicant has two children born in Pakistan during the relevant period on November 26, 1984 and January 5, 1987. On his Form I-687 he lists only one absence from the United States during the relevant period, in May 1987. On appeal, the applicant asserts that he actually departed the United States in 1984 and 1986 and it was during these absences that his children were conceived. The applicant does not address the inconsistencies noted by the director or his failure to list these absences on his Form I-687.

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 unless the applicant submits 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 proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. The material inconsistencies noted above cast doubt on the reliability of the applicant's testimony and the evidence contained in the record.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Finally, the applicant indicates on appeal that he used a false passport to enter the United States during each of his departures in 1984, 1986, 1987 and 1988. Section 245A(a)(4)(A) of the Immigration & Nationality Act (the Act), 8 U.S.C. § 1255a(a)(4)(A), requires an alien to establish that he or she is admissible to the United States as an immigrant in order to be eligible for temporary resident status.

The record reflects that the applicant sought through misrepresentation to procure an immigration benefit under the Act. As noted above, the applicant admittedly entered the United States multiple times using a false passport and visa. An alien is inadmissible if he seeks through fraud or misrepresentation to procure an immigration benefit under the Act. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Thus, the applicant is inadmissible and ineligible for legalization benefits.

Pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), the cited grounds of inadmissibility may be waived in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. The AAO notes that the applicant has not filed a Form I-690 Application for Waiver of Grounds of Excludability relating to the misrepresentation. However, even if the waiver were filed and approved, the application would not be approvable since the applicant failed to establish his continuous residence for the duration of the relevant period. Accordingly, the applicant's appeal will be dismissed.

ORDER: The appeal is dismissed.