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



U.S. Citizenship
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Services

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FILE:



Office: MIAMI

Date: OCT 01 2010

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 [or Records] 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

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

The director denied the application, finding the applicant had failed to establish that he had resided in the United States throughout the requisite period. The director further found that the applicant had failed to respond to the director's notice of intent to deny (NOID). This finding shall be withdrawn.

On appeal, the applicant asserts that he responded to the director's NOID and submits a copy of his response.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

An applicant for permanent resident status under section 1104 of 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 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, *Matter of E-M-* also states 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 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 (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.

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 issue in this proceeding is whether the applicant established that he: (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status since such date and through May 4, 1988.

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 declarations written by friends, family, and [REDACTED]

The declarations from [REDACTED] and [REDACTED] all contain statements that the declarants have known the applicant for all or part of the requisite period and that they attest to the applicant being physically present in the United States during the same period. These declarations fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite 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 declarations 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 declarations. To be considered probative and credible, declarants must do more than simply state that a declarant 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 declarations do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant submitted declarations from his mother and brother, both of whom reside in [REDACTED]. He also submitted a declaration from his wife, in response to the director's finding that the applicant's absences did not coincide with conception dates for his children. The applicant's wife asserts that she visited the applicant in the United States. In the absence of supporting evidence, her assertion has little probative value.

The director noted several discrepancies. For example, declarant [REDACTED] stated that the applicant resided in New York when he first came to the United States, whereas the applicant indicated he had always resided in Florida. In response, the applicant states that his former attorney made an error. The director noted that the applicant had been inconsistent as to when he first entered the United States. In an affidavit for determination of class membership, the applicant indicated he

first entered the United States in August 1981. In a sworn statement signed on February 21, 2006, the applicant stated he first entered the United States in either October or November 1981. On appeal, the applicant submits a copy of his passport and claims that it is proof that he entered the United States on a nonimmigrant visa on December 23, 1981. However, the entry stamp is illegible.

Finally, the director noted that the applicant's children were born in Pakistan while he was residing in the United States. In response, the applicant submitted a declaration from his wife in which she attempts to reconcile the dates of conception, with her own and her husband's travels.

The AAO finds that these discrepancies undermine the applicant's credibility. Moreover, the applicant fails to submit detailed, credible evidence in support of his claim of continuous residence throughout the requisite period. Thus, it is found that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. Accordingly, the applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This is a final determination of eligibility.