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U.S. Citizenship
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Services

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FILE: [Redacted] MSC 02 227 60970

Office: CHICAGO

Date: APR 27 2007

IN RE: Applicant: [Redacted]



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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the evidence submitted by the applicant substantiates his claim of continuous residency in the United States during the qualifying period. Counsel submits a brief in support of the appeal.

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. Section 1104(c)(2)(B) of the LIFE Act; 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 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 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 Citizenship and Immigration Services (CIS) 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an undated affidavit submitted in conjunction with his Form I-687, Application for Status as a Temporary Resident, which he filed on January 5, 1990, the applicant stated that he first came to the United States on September 28, 1981, leaving once on February 11, 1985 to visit Pakistan on the death of his grandmother. The applicant stated that he returned on March 21, 1985 pursuant to a visa.

On his Form I-687 application, the applicant stated that he entered the United States pursuant to a B1, nonimmigrant visitor's visa issued on August 26, 1981 that authorized him to stay in the United States until August 26, 1982, and that he violated his visa status by overstaying with the intent to permanently reside in the United States.

The applicant further stated that during the qualifying period, he worked for the Southland Chevron Gas Station in Fort Lauderdale, Florida from November 1981 to January 1985, and at Shah Auto Service in Fort Lauderdale from April 1985 through January 3, 1990, the date of his Form I-687 application. The applicant also stated that he lived at the following addresses in Fort Lauderdale during the qualifying period:

October 1981 to January 1985
April 1985 to February 1988
From March 1988

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. Copies of statements of earnings issued by Houston Fabricating, Inc. in Stafford, Texas for the pay periods ending November 29, and December 6, 13, 20 and 27, 1981. The earnings statements identify the applicant as the employee. However, the applicant at no time claimed to have lived and worked in Texas during the qualifying period. The applicant submitted no evidence to show a relationship existed between the Southland Chevron Gas Station in Fort Lauderdale, where he claimed to have worked from November 1981 to January 1985, and Houston Fabricating, Inc. The earnings statements do not contain an address or show a valid social security number for the applicant. 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).
2. A copy of a Pakistani passport reflecting that the applicant was issued a B2 visa on August 26, 1981 in Karachi, Pakistan, which was valid for multiple entries until August 26, 1982. The passport also reflects that the applicant entered the United States pursuant to that visa on September 28, 1981. The passport also reflects that the applicant was issued a B1/B2 visa on March 10, 1985 in Karachi, which was valid for multiple entries until March 10, 1990, and that the applicant entered the United States pursuant to that visa on March 21, 1985 and again on February 13, 1986. A Pakistani immigration stamp is dated May 25, 1985; however, it is unclear whether the stamp is an exit or entry stamp. Nonetheless, the applicant stated on his Form I-687 application and in his statement that he was absent from the United States only for the period February 11 to March 21, 1985. The record contains no documentation to resolve this inconsistency. *Id.*

The applicant submitted no other evidence in an attempt to establish that he continuously resided in the United States in an illegal status from prior to January 1, 1982 to May 4, 1988. Given the unresolved inconsistencies in the record, the applicant has failed to establish continuous residence in the U.S. for the required period.

On appeal, counsel asserts that the applicant's evidence demonstrates that he has "remained in his unlawful status from the time of his entry in 1981 until the time he became a class member in 1990. No evidence was submitted to contradict his unlawful presence in the United States in the prescribed periods." Counsel's argument is totally without merit. First, the record reflects that the applicant entered the United States legally in September 1981 pursuant to a valid B2 visa. Further, the applicant submitted no competent evidence to establish that he violated his visa status prior to its expiration date in August 1982. The applicant stated that he violated his visa status by overstaying; however, as his status did not expire until August 26, 1982, he was in a legal status until that date. Therefore, the evidence submitted by the applicant establishes that he is statutorily ineligible for benefits under the LIFE Act, as he did not *illegally* reside in the United States continuously from prior to January 1, 1982.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the district office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

The record reflects that the applicant was arrested by the Evanston, Illinois Police Department on April 4, 2004 for battery. On November 4, 1993, the court struck the case, with leave to reinstate, because the complaining witness was not present in court. Case number [REDACTED]

The record also reflects that the applicant filed a new Form I-687 application on December 19, 2005 (MSC 06 080 22740), which was denied by the National Benefits Center on July 10, 2006. The record does not reflect that the applicant appealed the denial of that decision, and it is not at issue in this appeal.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.