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U.S. Citizenship  
and Immigration  
Services

L2

[Redacted]

FILE: [Redacted] Office: CHICAGO  
MSC 02 250 61232

Date: JAN 10 2008

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:

[Redacted]

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he had continuously resided in the United States in an unlawful status from since before January 1, 1982, through May 4, 1988.

On appeal, counsel contends that the director improperly denied the instant application in violation of internal regulations. Counsel asserts that the director did not give proper weight to the evidence submitted with the application.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status since before January 1, 1982, through May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

In the June 23, 2005, Notice of Intent to Deny (NOID), the director stated that the evidence submitted by the applicant failed to establish his continuous unlawful presence in the United States from before January 1, 1982, through May 4, 1988. The director stated that the applicant failed to provide an adequate amount of primary and secondary evidence to establish his presence in the United States during the requisite period. Although the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) to the instant application, it is harmless error because 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.12(f).

The director also stated that there was a discrepancy in the record regarding the applicant's absence from the United States. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no new evidence was received. In the August 31, 2005, Notice of Decision (NOD), the director denied the instant application based on the reasons stated in the NOID.

On appeal, counsel contends that director improperly denied the instant application in violation of internal regulations. Counsel asserts that the applicant provided affidavits in support of his application. Counsel cites an Immigration and Nationality Services (now Department of Homeland Security or DHS) internal agency document.<sup>1</sup> Counsel contends that director violated internal policies and is required to accept affidavits as evidence of continuance residence in the United States.

In support of his application, the applicant submitted only one affidavit, his own, dated March 18, 1990. He stated that he first entered the United States on December 16, 1980, without inspection. He further stated that he went to India to visit family and friends from June 6, 1987, to July 18, 1987. To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The applicant's own assertion that he resided in a continuous unlawful status in the United States during the requisite period is not sufficient. The record does not contain any other submitted affidavits.

On appeal, counsel asserts that the director failed to consider a letter from the Hindu Temple of Greater Chicago and a letter from American Telugu Association. However, the record does not

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<sup>1</sup> 66 No. 12 Interpreter Releases 347, Appendix I, 358-360 (March 27, 1989).

contain these letters. The record contains three envelopes date stamped in 1990, which are not relevant. The record does not reflect any other submitted evidence.

The director also noted a discrepancy in the applicant's record. The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act on March 18, 1990. At Question #35, where asked to list absences from the United States since entry, the applicant stated one absence from June 6, 1987 to July 18, 1987, to visit family and friends in India. The record also contains the applicant's Form G-325, Biographic Information dated May 18, 2002, in which the applicant stated that he was married in India on April 24, 1984. There is no explanation in the record to reconcile this discrepancy as to dates of the applicant's absences from the United States. Counsel failed to address this issue on appeal.

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). There is no independent objective evidence in the record to explain these inconsistent statements or point to where the truth lies.

The AAO agrees with the director and finds that the applicant failed to establish continuous physical presence in the United States from before January 1, 1982, through May 4, 1988. The record contains inconsistencies and contradictory statements by the applicant himself. The absence of supporting documentation to corroborate the applicant's claim of continuous unlawful residence during the requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's inconsistent statements regarding his absence from the United States and the lack of corroborating evidence, it is concluded that he has failed to demonstrate continuous unlawful residence in the United States during the requisite period.

Therefore, based on the above, the applicant has failed to establish continuous residence in an unlawful status in the United States from before January 1, 1982, through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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