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FILE:



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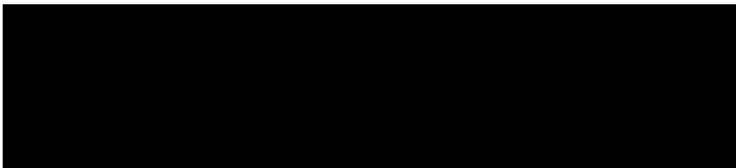
IN RE: Applicant:



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.

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 (director) in New York City. It 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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel resubmits some previously submitted documentation, augments the record with some additional documentation, and requests that the case be reconsidered.

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).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(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 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of India who was born September 20, 1967 and claims to have lived in the United States since April 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 23, 2001. On June 19, 2002 the applicant was interviewed at the New York District Office. At that time the record included the following documentary evidence of the applicant’s residence in the United States during the 1980s:

- An affidavit by [REDACTED], a U.S. citizen residing in the Dominican Republic, dated September 27, 1991, stating that the applicant is his cousin and resided with him at [REDACTED] in Cleveland, Ohio, from April 1981 to June 1985.
- An affidavit by [REDACTED], a resident of Montreal, Canada, dated October 31, 1991, stating that the applicant visited him in Montreal from May 5 to May 28, 1987.
- An affidavit by [REDACTED], a resident of [REDACTED] in Brooklyn, New York, dated February 15, 1992, stating that the applicant resided with him from August 1985 to April 1987, sharing the rental and utility expenses.

- An affidavit by [REDACTED], a resident of [REDACTED] in Brooklyn, New York, dated February 5, 1992, stating that the applicant resided with him from July 1987 to June 1991, sharing the rental and utility expenses.
- A sworn statement by a representative of Khalsa Construction Company in Brooklyn, New York, dated February 15, 1992, stating that the applicant worked for the company as a “helper” from August 1985 to April 1987, and was paid \$170/week in cash.
- A statement by a representative of Perfect Home Improvement, a company located in Brooklyn, New York, dated February 5, 1992, certifying that the applicant was employed as a “helper” from July 1987 to June 1990, and was paid \$150/week in cash.

On January 25, 2005, the director issued a Notice of Intent to Deny (NOID), citing some inconsistencies between the applicant’s oral testimony at his interview for LIFE legalization and agency records, including information provided by the applicant on his Form I-485 and on a previously submitted Form I-687 (application for temporary resident status). The director indicated that the affidavits and statements listed above were insufficient to establish the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

On April 21, 2006, the director issued a Notice of Decision denying the application. The director found that the applicant had failed to submit additional evidence in response to the NOID, and therefore denied the application for the reasons stated therein.

The applicant filed a timely appeal on May 10, 2006, supplemented by evidence that a response to the NOID had actually been delivered to the New York District Office by UPS on February 22, 2005. Copies of those materials were resubmitted with the appeal, which included a letter from counsel addressing various evidentiary inconsistencies discussed in the NOID and the following pertinent documentation:

Another statement from [REDACTED], now located in Richmond Hill, New York, signed by the owner, [REDACTED], dated February 16, 2005, certifying that the applicant was employed by the company from August 1985 to April 1987.

A letter by the vice president of The Sikh Cultural Society, Inc. of Richmond Hill, New York, dated February 17, 2005, stating that the applicant had been a member of the organization since 1982.

Also submitted with the appeal were photocopies of some additional affidavits that were prepared later in 2005 in connection with a separate application for temporary resident status (Form I-687) filed on February 22, 2005 (MSC 05 145 10166). They included the following:

- An affidavit by [REDACTED] a resident of Amherst, New York (and the brother of the earlier affiant [REDACTED]), dated June 13, 2005, confirming that the applicant lived with his brother in Cleveland, Ohio, from April 1981 to June 1985.

Four virtually identical affidavits, dated in May and June 2005, by (1) [REDACTED] of Astoria, New York, (2) [REDACTED] of Elmhurst, New York, (3) [REDACTED] of Jamaica, New York, and (4) [REDACTED] of Bellerose, New York, all of whom stated that they had known the applicant in the United States since 1981 or 1982 and listed eleven addresses in the United States for the applicant between April 1981 and 2005, including the three identified by other affiants ([REDACTED], and [REDACTED]) for the years 1981-1991 and one additional short-term address in the 1980s – at [REDACTED] in Jamaica, New York – from May to June 1987.

That applicant also submitted his own affidavit with the appeal, dated May 9, 2006, reiterating his claim to have resided in the United States continuously since April 1981.

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.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite time period for LIFE legalization. For someone claiming to have lived in the United States since April 1981, when he was 13 years old, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence – such as school records, an immunization history, or any other personal document – during the following seven years through May 4, 1988.

The affidavits in the record have minimalist formats with limited personal input by the affiants. Though each of the affiants claims to have known the applicant for a long time, and some claim that he resided with them during the 1980s, they provide almost no information about the applicant's life in the United States, and his interaction with them over the years. Some of the affiants indicate that they did not know the applicant as far back as 1981, and therefore have no

personal knowledge of whether he was residing in the United States before January 1, 1982. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little evidentiary weight. They are not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988.

With regard to the virtually identical statements from Khalsa Construction Company and Perfect Home Improvement about the applicant's employment as a "helper" during the years 1985-1991, neither comports with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address at the time of employment, did not describe the applicant's duties in detail, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. The AAO also notes that on the earlier statements from 1992 the signatures of the company representatives are not clearly legible, and that their names and job titles are not identified elsewhere on the documents. For the reasons discussed above, the AAO determines that the employment statements have little probative value. Even if the AAO were to give them greater evidentiary weight, they would not demonstrate that the applicant was residing in the United States before 1985.

In a similar vein, the letter from the vice president of the Sikh Cultural Society, Inc. does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The vice president's letter states simply that the applicant has been a member of the organization since 1982. It does not state where the applicant lived at any point in time between 1982 and 1988, does not indicate how and when the vice president met the applicant, and does not specify whether his information about the applicant's membership is based on personal knowledge, the organization's records, or hearsay. Since the vice president's letter does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. The letter is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

For the reasons discussed above, 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.