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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 019 63611

Office: NEW YORK

Date:

**JUN 11 2008**

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 was absent from the United States for seven months in 1987, which interrupted his continuous residence and physical presence in the United States during the time periods required for LIFE legalization.

On appeal, the applicant asserts that he traveled to India to visit his ill father and was delayed in returning to the United States because of his lack of documentation, making it necessary to come back through third countries.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and 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.”

“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.” 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.” 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 claims to have resided in the United States since March 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on October 19, 2001.

In a Notice of Intent to Deny (NOID), issued on October 26, 2006, the director cited the applicant’s testimony at his LIFE legalization interview on January 27, 2004, that he departed the United States to visit his parents in India on May 10, 1987, and did not leave India to return to the United States until December 10, 1987. The director noted that this testimony was consistent with information the applicant provided earlier on an application for temporary resident status (Form I-687) and a legalization questionnaire which he filed on July 29, 1991. An absence from the United States of this duration, the director indicated, broke the applicant’s continuous residence and physical presence in the United States during the requisite periods for LIFE legalization, making him statutorily ineligible for adjustment of status under the LIFE Act. The applicant was granted 30 days to submit additional evidence that he fulfilled the residence and physical presence requirements for legalization under the LIFE Act.

The applicant responded to the NOID, but did not submit any additional evidence regarding the trip to India and his absence from the United States in 1987. On December 7, 2006, therefore, the director denied the application for the reasons stated in the NOID.

On appeal, the applicant submits an affidavit stating the purpose of his departure from the United States in May 1987 was to visit his father, who was seriously ill in India. The applicant states he could not return to the United States immediately because he did not have proper documentation and therefore had to make arrangements to return indirectly through other countries. According to the applicant, his absence from the United States was “innocent and casual” in nature and its duration was beyond his control. In the applicant’s view, therefore, the seven-month absence should not be considered an interruption of his continuous residence (or physical presence) in the United States.

It is undisputed that the applicant’s seven-month absence from the United States far exceeded the 45-day maximum prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien’s continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term “emergent reasons” is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means “coming unexpectedly into being.”

The applicant states that he flew to India on May 10, 1987 to visit his ill father, but has not presented a persuasive case that any emergent reason(s) made it necessary for him to remain in India for more than half a year. While the applicant asserts that his father’s illness was the reason for his trip, he has submitted no medical records or other documentary evidence thereof, has not indicated the outcome of the illness, and has not explained why his presence was needed for so long in India. Nor has the applicant identified any unexpected events that extended his stay in India and prevented an earlier return to the United States. The applicant vaguely claims that it took him time to make arrangements to return through third countries, but has provided no details or corroborative documentation. The return itself took only 8-10 days, according to previously cited evidence in the record, from the day the applicant left India on December 10, 1987 to the day he crossed the Mexican border into California on December 18 or 20, 1987.

Considering the paucity of evidence in the record, the AAO is not persuaded that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1) and *Matter of C-*, prevented the applicant’s return to the United States from India in 1987 within the 45-day period allowed in the regulation.

Furthermore, while the applicant’s absence from the United States may have been “casual and innocent,” within the meaning of 8 C.F.R. § 245a.16(b), its seven-month duration cannot be considered “brief.” No rationale has been offered by the applicant as to how an absence of such length can be reconciled with the requirement that an applicant for LIFE legalization have been continuously physically present in the United States during the year in question (1987).

Based on the foregoing analysis, the AAO concludes that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.<sup>1</sup>

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

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<sup>1</sup> Documentation in the record shows that a criminal complaint was filed by the Ulster (New York) Town Police against the applicant on May 21, 1995, under section 260.20, New York Penal Law, for “unlawfully dealing with a child” by selling tobacco to an individual under the age of 18 while employed at the Mall Mobil service station. A violation of this code section is classified as a Class A misdemeanor in New York, which is punishable by a maximum term of three months in jail. No final court disposition of this charge has been submitted. The AAO notes for the record, however, that under section 1104(c)(2)(D)(ii) of the LIFE Act, and 8 C.F.R. § 245a.18(a)(1), an alien who has been convicted of three or more misdemeanors (or one felony) committed in the United States is ineligible for adjustment to Lawful Permanent Resident status.