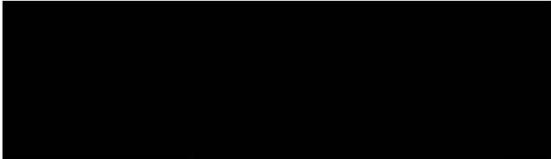


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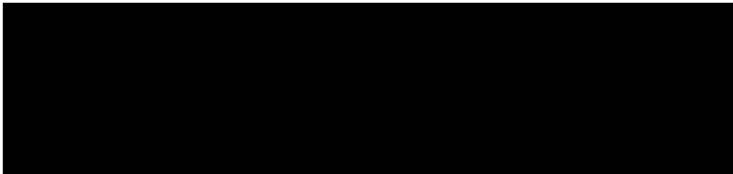
IN RE: Applicant:



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.

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

Robert P. Wichmann, 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 Phoenix, Arizona. 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 contests the director's analysis of the evidence and asserts that the documentation of record, supplemented by an additional affidavit submitted with the appeal, establishes the applicant's continuous residence in the United States for the requisite period for LIFE legalization.

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).

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 lived in the United States since June 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 24, 2001.

On April 29, 2005, the director issued a Notice of Intent to Deny (NOID), listing the documentation provided by the applicant as evidence of his continuous residence in the United States from before January 1, 1982 through May 4, 1988. Aside from a photocopied envelope addressed to the applicant in Yuba City, California, bearing a postmark of March 3, 1983, all of the evidence of the applicant's residence in the United States during the years 1981-1988 consisted of statements and affidavits from friends and family dating from 1990 to 2001. The director cited the envelope with the 1983 postmark, as well as the testimony the applicant gave during an earlier proceeding on April 20, 1994, as credible evidence that the applicant was in the United States for a portion of the qualifying period for LIFE legalization, but noted that the myriad affidavits and statements from friends and relatives were not supported by any other objective, corroborative evidence from the 1980s. The director also listed a series of "irregular and suspect actions" by the applicant in connection with his current application for permanent resident status, and an earlier application for temporary resident status, which the director viewed as diminishing the overall credibility of the documentation in the record. The applicant was granted 30 days to submit additional evidence to establish his continuous unlawful residence in the United States during the requisite period for legalization under the LIFE Act.

The applicant did not respond to the NOID. On July 28, 2006, therefore, the director denied the application on the ground that the applicant failed to establish his eligibility for permanent resident status under the LIFE Act.

On appeal, counsel asserts (on the Form I-290B) that the evidence of record is "more than sufficient to meet the applicant's burden of proving U.S. residence for the requisite period." Counsel supplements the record with an additional affidavit, dated August 23, 2005, from [REDACTED] (who had furnished an earlier affidavit in 2001), stating that he met the applicant at the Sikh temple in Yuba City on November 9, 1981, and "met with [the applicant] at his relatives' residence on special events" between 1981 and May 4, 1988. Counsel cites two previously submitted affidavits: (1) from [REDACTED] dated May 27, 1994, stating that he

picked up the applicant in Los Angeles and brought him to Yuba City on June 21, 1981, and (2) from [REDACTED], dated July 3, 1994, stating that the applicant worked for him seasonally “pruning, thinning and harvesting peaches and prunes” between November 1981 and the end of 1986, as strong evidence of the applicant’s residence in the United States during the 1980s. Counsel also provides some plausible explanations for the various “irregular and suspect actions” by the applicant that were discussed by the director in the NOID.

The applicant’s appeal is undermined, however, by other suspect evidence in the record. For example, counsel resubmits a photograph of the applicant and the affiant [REDACTED], allegedly taken at the Sikh temple in Yuba City on January 9, 1981. This claim is not credible. Aside from the fact that there are no distinguishing features on the photograph to establish either its date or its location, the applicant does not even claim to have been in the United States as early as January 1981. Counsel also resubmits a copy of the air mail envelope addressed to the applicant in Yuba City, postmarked March 3, 1983, along with the letter from a family member in India. The postmark is clearly fraudulent, since the five rupee stamp on the envelope, honoring solar energy, was not issued by the Indian government until January 1, 1988. See Scott 2006 Standard Postage Stamp Catalogue, Vol. 3, p. 819.

Doubt cast on any aspect of the applicant’s evidence also reflects on the reliability of the applicant’s remaining evidence. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he 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.

With the discrediting of the letter envelope bearing the 1983 postmark, the record contains no contemporary documentation from the 1980s showing the applicant to have resided, or even been present, in the United States during the years 1981 to 1988. As for the affidavits in the record, they have mostly minimalist or fill-in-the-blank formats with limited personal input by the affiants. For the amount of time they claim to have known the applicant, the affiants provide remarkably little information about his life in the United States, and their interaction with him over the years. Moreover, the affidavits are not accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant and their own presence in the United States during the 1980s. As previously discussed, the one photograph in the record with images of the applicant and an affiant bears no evidence of having been taken in 1981, as claimed. In view of these substantive shortcomings, the AAO finds that the affidavits have little evidentiary weight.

Based on the foregoing analysis, the AAO determines 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, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). 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.