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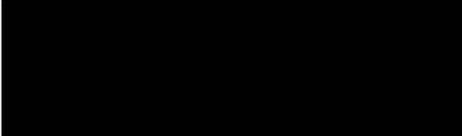
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE: [Redacted]
MSC 02 011 62651

Office: CHICAGO

Date: MAR 07 2008

IN RE: Applicant:



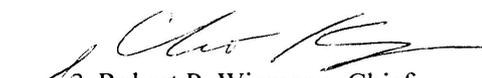
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.


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, 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 entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel contends that the director failed to properly consider the affidavits submitted by the applicant, as required by 8 C.F.R. § 245a.12(f). Counsel submits additional arguments and evidence in support of the instant 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.

“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.

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.* at 80. 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, 431 (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)(v) states that letters from churches, unions or other organizations attesting to the applicant’s residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing entry into the United States before January 1, 1982, and continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In the Notice of Intent to Deny, dated May 2, 2003, the director stated that the applicant had failed to submit proof of continuous unlawful residence in the United States for the period of January 1, 1982, through May 4, 1988. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that no additional evidence was received.

In the Notice of Decision, dated February 8, 2005, the director stated that the applicant failed to provide any primary or secondary evidence to establish his presence in the United States from January 1, 1982, through May 4, 1988. Although the director incorrectly cited the regulation at 8 C.F.R. § 103.2(b) as an evidentiary standard, we find the error harmless because we have conducted a *de novo* review. 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).

On March 10, 2005, counsel filed a timely appeal and submitted additional evidence in support of the applicant’s claim. Counsel contends that the director failed to properly consider the affidavits

submitted by the applicant, as required by 8 C.F.R. § 245a.12(f). Counsel submits additional arguments and evidence in support of the instant application.

In support of his application, the applicant submitted a letter by [REDACTED], founder/pastor of India Mission Telugu Methodist Church, dated January 10, 2003. The affiant stated that the applicant and his parents have been members of the church since 1981. The affiant stated that the applicant was supervised by the Church while his parents worked. The affiant made arrangements for the applicant to study under members of the Church from 1981 to 1985. The affiant stated that the applicant took temporary daily paid jobs to support himself when he sixteen years old. The affiant provided his telephone number. The affiant failed to show inclusive dates of membership, state the address where the applicant resided during membership period, and establish the origin of the information being attested to as required by 8 C.F.R. § 245a.2(d)(3)(v). The absence of sufficient detailed information in the affiant's letter detracts from the credibility of the affiant.

The record includes a sworn affidavit by [REDACTED], dated February 14, 2005. The affiant stated that the applicant has been living in the United States since 1984. The affiant provided his address. Although not required, he did not include any supporting documentation of his identity or presence in the United States. The affiant did not indicate how he dated his acquaintance with the applicant or how frequently he saw the applicant. The absence of sufficiently detailed information to corroborate the applicant's claim brings into question the credibility of the affiant.

The record contains a sworn affidavit by the applicant, dated March 26, 1990. The applicant stated that he first entered the United States in September 1981 through the Mexican border. He also stated that he last departed the United States in June 1987 to India and returned on July 1987. The applicant confirmed this absence in his Form I-485, Application to Register Permanent Resident or Adjust Status, dated October 11, 2001. The applicant confirmed that the date of his last arrival was in July 1987.

However, the record also contains the applicant's Form I-687, Application for Status as a Temporary Resident, dated March 27, 1990. In his Form I-687, the applicant indicated that he was issued a B-1/B-2 visa in Madras, India, on March 20, 1989. The applicant provided his I-94, Departure Record, which contains an admittance stamp to the United States on March 26, 1989.

Based on the above information, the applicant stated that he was absent from the United States for a month in 1987. While the applicant provided no evidence of his 1987 absence or reentry, the record contains evidence of a 1989 entry into the United States. The applicant's Form I-485, which he signed under penalty of perjury, does not indicate a second absence from the United States after 1987. There is nothing in the record to indicate whether this second absence began during the requisite period or after May 4, 1988. Also, there is nothing in the record to indicate whether the absence exceeded the permitted allowance as required under 8 C.F.R. § 245a.15(c)(1). Regardless of the length of the absence or time period of the absence, the applicant's omission in his Form I-485 and in his own affidavit seriously detracts from his credibility.

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). Here, the record does not contain any independent, objective evidence to resolve this discrepancy.

The applicant has not provided any credible, contemporaneous evidence of residence in the United States during the duration of the requisite period. Although not required, none of the affidavits included any supporting documentation of the affiants' identity or presence in the United States during the requisite period. The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. In addition, the applicant's absence from the United States for an undetermined time period after his stated 1987 absence further detracts from the credibility of his claim of continuous unlawful residence in the United States throughout the requisite period.

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 reliance upon documents with minimal probative value and his failure to acknowledge his second absence from the United States on the instant application, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above discussion, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.