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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: **MAY 27 2008**

MSC 02 197 63794

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. 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.


For 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 Los Angeles, California. 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 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.

On appeal counsel asserts that the director did not properly consider the evidence in the record and reiterates the applicant's claim to have resided in the United States continuously in an unlawful status since 1981.

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 claims to have lived in the United States since May 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 15, 2002. At that time the record included the following documentary evidence of the applicant’s residence and presence in the United States during the 1980s, which had been filed in April 1990 in connection with an application for status as a temporary resident (Form I-687) and an application for class membership in the *CSS v. Meese* class action lawsuit,¹ and in November 1994 at the applicant’s initial legalization interview:

- An affidavit by [REDACTED], a legal permanent resident of the United States, dated April 9, 1990, declaring that the applicant departed the United States on a trip to India on December 10, 1987.
- An affidavit by [REDACTED], a resident of Bell, California, dated November 14, 1994, stating that he met the applicant in December 1981 and that the applicant

¹ *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

had resided with him at [REDACTED] in Bell, [REDACTED] in Huntington Park, and at [REDACTED] in Bell, paying his rent in cash.

- An affidavit by [REDACTED], a resident of Orange County, California, dated November 14, 1994, stating that he met the applicant in August 1985, and visited the applicant often at his home located at [REDACTED] in Bell.

At the time the LIFE application was filed, two more affidavits were submitted, including:

- An affidavit from [REDACTED], a resident of Clovis, California, dated March 23, 2002, stating that she is the applicant's older sister and has personal knowledge that the applicant had resided in the United States continuously since 1981.
- An affidavit from [REDACTED] a resident of La Crescenta, California, dated April 5, 2002, stating that he met the applicant in 1981, that they got together at a Sikh study circle and at a Sikh temple, and that he had personal knowledge that the applicant had resided in the United States continuously since 1981.

The applicant subsequently submitted two further pieces of evidence, including:

- A letter from [REDACTED] president of the Sikh Study Circle, Inc. in Los Angeles, dated December 4, 2005, stating that he has known the applicant **personally** since 1981, and that the applicant had been coming to the Sikh Temple since 1981, doing volunteer work in the food kitchen for the homeless and for the Sunday congregation, and assisting in the temple's annual summer camps.
- An affidavit by [REDACTED] a resident of Los Angeles, dated December 9, 2005, stating that he has own and been friends with the applicant since 1981, when they met through a mutual friend at a church get-together.

On September 5, 2006, the director issued a Notice of Intent to Deny (NOID), indicating that the documentation of record and the applicant's oral testimony at his interview for LIFE legalization on May 5, 2006 were insufficient to establish the applicant's entry into the United States before January 1, 1982, and his continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant responded to the NOID with two additional affidavits from his sister, [REDACTED], and his friend, [REDACTED] both dated September 27, 2006, which supplemented their earlier affidavits from 2002 and 2005:

- [REDACTED] states that she knows the applicant left India for the United States in May 1981 because she came to the airport to see him off, and that she came to the United States herself in April 1982. [REDACTED] states that the applicant resided at [REDACTED] in Huntington Park, California, from around December 1981 to January 1985, at [REDACTED] in Bell, California, from February 1985 to January 1988, and at [REDACTED] in Bell from January 1988 through April 1991. According to [REDACTED], the applicant worked in “housekeeping” from December 1981 to December 1985, in ice cream sales from January 1986 to December 1987, and in “packing jobs” from January 1988 to December 1992. [REDACTED] indicates that the applicant made a brief trip to India from late December 1987 to late January 1988.
- [REDACTED] provided the same information as [REDACTED] with regard to the applicant’s residential addresses and job experiences from December 1981 to the early 1990s, and the applicant’s trip to India in December 1987 and January 1988.

On October 5, 2006, the director issued a Notice of Decision denying the application. The director found that the documentation submitted in response to the NOID did not overcome the grounds for denial. In the director’s view, the evidence of record was insufficient to establish that the applicant entered the United States before January 1, 1982 and resided in the United States thereafter in continuous unlawful status through May 4, 1988, as required to be eligible for legalization under the LIFE Act.

On appeal, counsel asserts that the director did not properly consider the evidence in the record, reiterates the applicant’s claim to have resided in the United States continuously in an unlawful status since 1981, and resubmits copies of previously submitted documentation.

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, or even been present, in the United States during the years 1981 to 1988. The earliest documentary evidence of the applicant’s presence in the United States are (1) a six-month employment authorization card issued to him by the Department of Justice (DOJ) on April 9, 1990, and (2) a temporary resident certificate issued to him by the DOJ on the same date, valid until November 4, 1992. For someone claiming to have lived and worked in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence before 1990. Instead, he relies solely on affidavits.

The affidavits in the record, however, 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. Even the two supplemental affidavits submitted on appeal by the applicant's sister, [REDACTED], and friend, [REDACTED], though somewhat longer than the others, amount to little more than recitations of residential addresses where they assert the applicant lived during the 1960s, and vague descriptions of his work experience without identifying any particular employers or work locations. Finally, 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 in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little evidentiary weight.

Based on the foregoing analysis, 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, 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.