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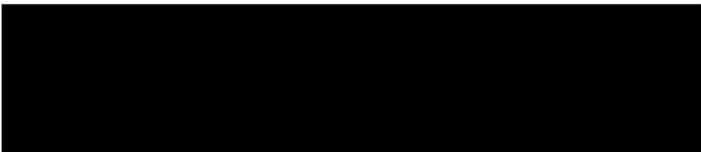
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 330 60031

Office: ATLANTA

Date: **MAY 28 2008**

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Atlanta, 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 had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, applicant contends that the director has improperly decided his case, which should fall under the Family Unity Act.¹ The applicant requests that all the proof and evidence be carefully considered.

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.

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.* 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 (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

¹ The applicant filed a Form I-485. The Family Unity application is Form I-817.

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).

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.

On August 26, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, as the beneficiary of his father's claim for class membership. In his Form I-687, at Part 2h, the applicant indicated that he was a "child of a person eligible for LIFE (LULAC Class I)." This, however, does not imply that he derives adjustment of status based on the application of his father. Rather, the applicant must establish his own eligibility. The application will be adjudicated based on the merits of the applicant's documentation.

In an August 10, 2005, Notice of Intent to Deny, the director stated that the applicant was born in India on December 19, 1982, which proves the applicant was not in the United States prior to January 1, 1982. The director determined that the submitted evidence was insufficient to establish the eligibility requirements. The applicant was granted thirty (30) days to submit additional evidence. The record reflects that the applicant's father, [REDACTED], submitted a declaration, dated on August 26, 2005. [REDACTED] stated that he never intended to apply for his son under the LIFE Act. He stated that the application for legalization should have been under the Family Unity Act from the beginning. He also confirmed that the applicant was born in December 1982, entered the United States in March 1987, and never left the United States. In the September 10, 2005, Notice of Decision, the director denied the instant application and determined that the applicant was ineligible for adjustment of status under LIFE Legalization.

In support of his application, the record contains a copy of the applicant's birth certificate, which indicates he was born on December 19, 1982, in Delhi. The record also contains the applicant's Form I-94, Departure Record. The Form I-94 contains an admission stamp is dated March 13, 1987, in New York. The record also includes the applicant's Form G-325A, Biographic Information, dated February 14, 2003. In his Form G-325A, the applicant stated that he resided in New Delhi, India, from December 1982 through March 1987. Finally, the record contains the applicant's Jersey City Public School student report card, dated in 1987-1988.

The AAO concludes that the applicant has not met his burden. Based on the above evidence, the applicant did not enter the United States until March 13, 1987, well after the beginning of the statutory period. The record does not contain any contemporaneous evidence, or other sufficient credible evidence, to establish that the applicant resided in the United States before January 1, 1982, through May 4, 1988.

The applicant has, therefore, failed to establish that he entered the United States before January 1, 1982, and resided in continuous unlawful status in the United States since such date 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.