

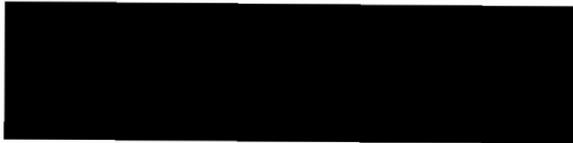
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 071 65218

Office: NEW YORK

Date: MAY 30 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:



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 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 was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal counsel asserts that the evidence of record, supplemented by an additional affidavit submitted with the appeal, establishes the applicant's eligibility 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 January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on December 10, 2001. At that time the only evidence in the record of the applicant's residence and presence in the United States during the 1980s was an affidavit from [REDACTED], dated April 2, 1990, which had been submitted in connection with an application for temporary resident status (Form I-687) which the applicant filed on May 2, 1990. In his short fill-in-the-blank affidavit [REDACTED], a resident of Van Nuys, California, stated simply that the applicant took a vacation to India from May 10 to June 16, 1987, and was picked up by the affiant in Los Angeles upon his return.

On February 6, 2004, the director issued a Notice of Intent to Deny (NOID), citing the lack of documentary evidence and indicating that the record was insufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant responded to the NOID with two additional affidavits and a photocopied envelope addressed to him in the United States from an individual in India. The two new affidavits, both dated March 2, 2004, were from [REDACTED] and [REDACTED] residents of Arleta and North Hollywood, California, who stated in virtually identical language that they had known the applicant since 1981 and 1982, respectively, that they met with the applicant at social and religious gatherings when he lived in the area, and that the applicant had resided at the following addresses: (1) [REDACTED] in Van Nuys, California, from 1981 to August 1989; (2) [REDACTED] in North Hollywood, California, from August 1989 to March 1991; and (3) [REDACTED] in Corona, New York, from 1991 to 2004. The photocopied envelope is addressed to the applicant at the Van Nuys address above from a sender in India and, on the reverse side, bears a postmark over the stamps which appears to read the 3rd day of an illegible month in the year 1981.

On March 27, 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, noting that the district office had tried to contact both affiants, but was unsuccessful.

On appeal, counsel asserts that the applicant provided sufficient evidence of his continuous residence and physical presence in the United States at his interview for LIFE legalization, on February 6, 2004, and in response to the NOID. According to counsel, one of the affiants the district office was unable to contact, [REDACTED] was ill and may have left the United States, while the other affiant, [REDACTED], was confined to a wheel chair. Counsel provided two phone numbers for [REDACTED] one of which had been previously provided on his affidavit. Counsel provided one additional affidavit from [REDACTED] a U.S. citizen residing in Richmond Hill, New York, dated April 14, 2006, who stated that he has resided in the United States since December 25, 1981, that he and the applicant share a common interest in poetry and Punjabi literature, that the applicant began telephoning him from California in 1982, and that they established personal contact when the applicant moved to New York in 1990 [1991].

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 and was continuously physically present in the United States from November 6, 1986 through May 4, 1988. The AAO determines that he has not.

Aside from the envelope submitted in response to the NOID, 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, aside from the envelope, is a notice from the legacy Immigration and Naturalization Service (INS) acknowledging its receipt on May 2, 1990 of the applicant's Form I-687 (application for legalization as a temporary resident). For someone claiming to have lived and worked in the United States since 1981, it is noteworthy that the applicant is able to produce virtually no primary evidence before 1990.

With regard to the envelope referenced above, the AAO notes that the applicant did not submit the original envelope, but rather photocopies of the front and back with the addressee/addressor on one side of the envelope and the stamps/postmark(s) on the other side of the envelope. It is impossible to confirm from the photocopy in the record whether the two sides belong to the same envelope. As for the postmark, the digit(s) for the month is (are) illegible and the digits of the year – "81" – are out of alignment with the digits of the day and month. These imperfections cast doubt on the authenticity of the postmark. The inauthenticity of the "1981" postmark is sealed by the fact that the eight stamps on the envelope come from a series extolling the dairy industry that was issued by the Indian government on January 25, 1982. *See Scott 2006 Standard Postage Stamp Catalogue*, Vol. 3, p. 812. Thus, the envelope in the record is not credible evidence of the applicant's residence in the United States during 1981. Moreover, 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).

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. The affidavits amount to little more than recitations of residential addresses where the affiants assert the applicant lived during the 1980s and 1990s, and vague descriptions of their personal friendships which are almost totally lacking in details. None of the affiants provides any information about the affiant's employment during the 1980s. 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 and their own presence 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 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, and was continuously physically present in the United States from November 6, 1986 to 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 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.