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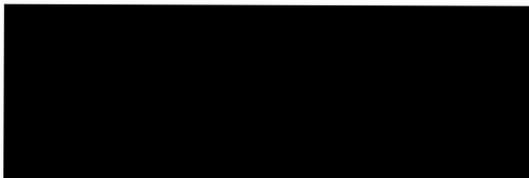
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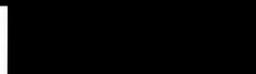
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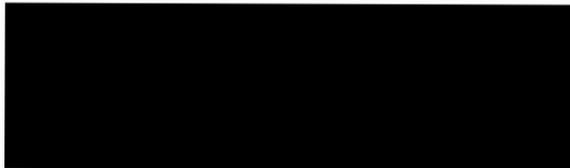
consolidated herein]
MSC 01 352 60400

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.

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 director in Baltimore, Maryland. 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 failed to properly evaluate the documents submitted by the applicant. In counsel's view, the evidence submitted by the applicant is sufficient to establish that he has 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 June 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 17, 2001. At that time the file included the following documentation as evidence of the applicant’s residence in the United States during the period 1981-1988:

- An affidavit from [REDACTED] manager of a 7-Eleven store in Diamond Bar, California, dated May 23, 1990, stating that the applicant was employed at his store from August 1981 through August 1986, and then worked at the 7-Eleven store in Indio, California, up to the present (1990).
- An affidavit from [REDACTED] a resident of Indio, California, dated June 22, 1990, stating that the applicant traveled to Mexico to meet his family in October 1987 for three weeks, and returned in November 1987 with the help of a smuggler.

In a Notice of Intent to Deny (NOID) dated April 8, 2005, the director declared that the affidavit of employment submitted by the applicant is not credible. The director noted that the affidavit failed to meet the standards set forth in 8 C.F.R. § 245a.2(d), and was not prepared on an official

7-Eleven company letterhead but on a local stamped letterhead, which can easily be forged. The director also noted that a copy of the applicant's passport in the file shows that the applicant was issued a passport in India on May 23, 1988, and that the applicant indicated his usual place of residence as Ludhiana, Punjab, India, on his marriage certificate issued in India on August 4, 1996. The director indicated that the foregoing information undermined the applicant's claim that he entered the United States before January 1982 and resided continuously in the country through May 1988. The applicant was granted 30 days to file a rebuttal and provide any additional evidence.

In response, the applicant offered some explanations for the documentary deficiencies and evidentiary discrepancies cited in the NOID. On November 18, 2005, however, the director denied the application because the applicant failed to establish that he entered the United States in 1981 and resided continuously in the country through the statutory period of May 4, 1988.

On appeal, counsel asserts that the director failed to properly evaluate the documentation submitted by the applicant, improperly relying on the lack of corroborating evidence to deny the application. Counsel submitted the following additional documentation as evidence of the applicant's residence in the United States during the period 1981-1988:

An affidavit from [REDACTED] a resident of Westhampton, New Jersey, dated December 21, 2005, stating that he had personal knowledge that the applicant lived in the United States during the period November 1981-1988, that the applicant resided in California at that time, that the applicant moved to New Jersey in 1990, and to Maryland in 2000, where he currently resides. [REDACTED] attests that the applicant visited him at a Sikh parade in New York in April 1982, when the affiant was living in Kew Gardens, New York.

- An affidavit from [REDACTED] a resident of Baltimore, Maryland, dated December 16, 2005, stating that he had known the applicant since 1981, that they met in a Sikh Temple in Stockton, California, in November 1981, that the applicant moved to New Jersey in 1990, and to Maryland in 2000, where he currently resides.

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 continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since June 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

The employment letter from [REDACTED] dated May 23, 1990, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the letter was not prepared on official 7-Eleven letterhead stationery, does not indicate the applicant's address at the time of employment, does not describe the applicant's job duties, does not indicate whether the information was taken from company records, and does not indicate whether such records are available for review. Nor was the letter supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. For the reasons discussed above, the AAO determines that the employment letter has limited probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits from [REDACTED] all have minimalist formats with little personal input by the affiants. The information in the affidavits is superficial, and could just as easily have been provided by the applicant. While two of the affiants claim to have known the applicant since 1981, none of the affiants provided information about his life in the United States, such as where he worked, and their interaction with him over the years. Though the affiants all claim to have personal knowledge of what they attested, none provided detailed information on how they acquired that knowledge. Nor are the affidavits 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 addition, [REDACTED] does not provide any information about the applicant's life in the United States before October 1987. He only attested to the applicant's alleged trip to Mexico during that month.

In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

In the file is a copy of the applicant's expired Indian passport. The passport, number [REDACTED] indicated an issue date of May 25, 1988, in Chandigarh, India, and that the applicant was domiciled in India at that time. The information on the passport showed that the applicant was in India at the time the passport was issued. The applicant did not submit any evidence showing how he could have gotten the passport any other way. The information on the passport is corroborated by other documentation in the record indicating that the applicant traveled to the United States in 1990 on the same passport issued to him in 1988. A Form I-409, Report of **Deserting Crewman**, indicated that the applicant arrived as a crew member on a vessel – [REDACTED] – in Baltimore, Maryland, on April 30, 1990. The applicant traveled on the same passport, number [REDACTED] that was issued to him in India on May 25, 1988. The Form I-409 indicates that the vessel was inspected by United States Immigration and Naturalization Service (USINS) officials on April 30, 1990, that the applicant was detained on board the vessel, and that on May 3, 1990, he deserted from the vessel. The applicant did not submit, and the record does

not reflect, any other documentation to show that the applicant resided in the United States before May 3, 1990.

Based on the foregoing analysis of the evidence, 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.