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FILE:

MSC 02 190 63596

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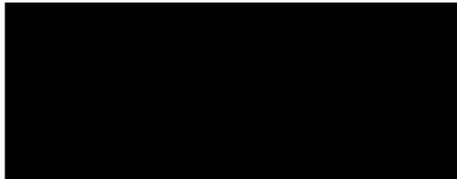
IN RE: Applicant:



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.

John F. Grissom, Acting 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 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.

On appeal, counsel asserts that the director did not give due weight to the affidavit evidence submitted by the applicant.

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 applicant, a native of India who claims to have resided in the United States since June 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 8, 2002. At that time the record included the following evidence of the applicant's residence in the United States during the 1980s, which had been submitted with a Form I-687 (application for temporary resident status) and a Form for Determination of Class Membership in *CSS v. Meese* (a legalization class action lawsuit) in 1990:

- An affidavit by [REDACTED] a resident of Milpitas, California, dated September 29, 1990, stating that he knew the applicant had resided at [REDACTED] from June 1981 to January 1986, and at [REDACTED] [in Santa Clara, California] from February 1986 to the present (1990).
- An affidavit by [REDACTED] a resident of Milpitas, California, dated September 30, 1990, stating that the applicant traveled to Canada in September 1987 and returned to the United States in October 1987.

On June 29, 2004, the applicant was interviewed for LIFE legalization, at which time he submitted the following additional documentation:

- A notarized statement by [REDACTED] a resident of Union City, California, undated, indicating that the applicant resided at [REDACTED] San Jose from June 1981 to February 1986.
- An affidavit by [REDACTED] a resident of Sunnyside, California, dated June 27, 2004, stating that he knew the applicant resided at [REDACTED] in Santa Clara from 1985 to 1988, and that he visited the applicant on many occasions at this address as well as at his current address in Flushing, New York, since 1990.
- An affidavit by [REDACTED] a resident of San Jose, California, dated June 28, 2004, stating that he knew the applicant resided at [REDACTED] Drive in Santa Clara from 1986 to 1988 and that he visited the applicant on many occasions at this address.
- An affidavit by [REDACTED] a resident of Flushing, New York, dated June 28, 2004, stating that he knew the applicant resided at [REDACTED] in Santa Clara, California, from 1986 to 1990, and that he visited the applicant on many occasions at this address.

On May 19, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the affidavit evidence lacked sufficient credibility to establish the applicant's continuous unlawful

residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant submitted three more affidavits from [REDACTED], dated June 5 and 6, 2007, which were identical, or virtually identical, to the affidavits they submitted at the time of the applicant's interview in 2004.

On August 2, 2007, the director issued a Notice of Decision denying the application. The director indicated that the affidavits submitted in response to the NOID were insufficiently probative to overcome the grounds for denial. The director concluded that the applicant had failed to establish his continuous unlawful residence in the United States during the requisite period for legalization under the LIFE Act.

On appeal counsel asserts that the director did not give proper weight to the affidavits submitted by the applicant, and contends that they establish the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

The issue in this proceeding is whether the applicant has furnished sufficient probative evidence to demonstrate that he continuously resided 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.

With regard to the various affidavits and statements from individuals who claim to have known the applicant during the 1980s, they all have minimalist or fill-in-the-blank formats that provide few details about the applicant's life in the United States and his interaction with the affiants during the years 1981 to 1988. For the amount of time they claim to have known him, the affiants offer remarkably little information about the applicant. For example, none of the affiants provides any information about how they met the applicant, none provides specific information as to when they met the applicant, and none indicates whether the applicant was employed during the 1980s and, if so, by whom. Furthermore, only two of the affiants – [REDACTED] and [REDACTED] – claim to have known the applicant as far back as 1981. Lastly, there is no supporting documentation in the record – such as photographs, letters, and the like – of the personal relationship between the applicant and any of the affiants during the 1980s. Considering the paucity of information in the affidavits and statements, these documents do not represent persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Given the lack of probative evidence in the record, 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, 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.