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**U.S. Citizenship  
and Immigration  
Services**

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FILE:

MSC 02 246 61790

Office: NEW YORK

Date:

**NOV 26 2008**

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous, unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel contends that the applicant is a genuine applicant and could only file secondary evidence in support of his application. Counsel asserts that the applicant has lost contact with most of the people whom he knew or met from 1981 to 1988. Counsel maintains that the applicant is eligible for adjustment of status.

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 must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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 section 1104 of the LIFE Act. 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.* at 80. 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.12(f).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of establishing, by a preponderance of the evidence, that the applicant’s claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

In support of the applicant’s claim of continuous residence, the record contains receipts, Form I-95A (Crewman’s Landing Permit), and affidavits. The submitted receipts are dated during the statutory period, but fail to contain the applicant’s name, address or any identifying information. Lacking relevant information, the receipts cannot be given any weight as evidence in support of the applicant’s claim.

The record contains a Form I-95A in the name of [REDACTED], dated in 1981. While this evidence tends to indicate that the applicant entered the United States in July 1981, there is no indication regarding the length of time the applicant remained in the United States. The record also contains a Form G-325A, Biographic Information, signed by the applicant on May 29, 2002. In his Form G-325A, the applicant stated that he was married in India on June 30, 1982. Based on this evidence, the applicant was absent from the United States for an undetermined period of time prior to June 30, 1982.

It is also noted that the applicant’s date of marriage in India in 1982 is inconsistent with his Form I-687, Application for Status as a Temporary Resident, dated September 22, 1990. In his Form I-687, the applicant stated only one absence in June 1987 from the United States throughout the statutory period. There is no mention of his absence in 1982. Furthermore, in his Form I-485, the applicant stated that he had two children born in India in 1983 and 1986. However, the applicant failed to state any absences prior to June 1987. These discrepancies cast doubt on the credibility of the applicant’s claim.

The record also contains affidavits from [REDACTED], and [REDACTED]. The first two affiants stated that their relationship with the applicant began in 1985 and 1986/1987. The affiants failed to provide information that would indicate personal knowledge of the applicant's places of residence or the circumstances of his residence over the years of their claimed relationships. Mr. [REDACTED] stated that the applicant resided in New York in 1986/1987; however, this is inconsistent with the applicant's testimony, as well as the other affiants. In his Form I-687, the applicant stated that he resided in California from September 1981 to October 1989. Mr. [REDACTED] also stated that the applicant resided in California from September 1981 to October 1989. Mr. [REDACTED] affidavit is inconsistent with the applicant's testimony as well as Mr. [REDACTED]. These inconsistencies further detract from the credibility of the applicant's claim.

The record also contains an affidavit from [REDACTED], who stated that he picked up the applicant when he first arrived into the United States, they became good friends, and the applicant visited them before leaving for Canada and on his return trip. The affiant failed to provide any dates or the applicant's places of residence in the United States during the statutory period. Because the affidavit is significantly lacking in relevant detail, it lacks probative value and can be given no weight as evidence of the applicant's entry or residence in the United States during the requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although there is evidence of the applicant's entry into the United States prior to January 1, 1982, the affidavits in the record that refer to the relevant years are bereft of sufficient detail to be found credible or probative. The affiants provide inconsistent and contradictory information regarding the applicant's claimed dates and places of residence. The applicant's own testimony is inconsistent regarding his absences and fails to establish his continuous residence in the United States during the requisite period.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that he resided in the United States for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the lack of credible supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence from such date through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.