

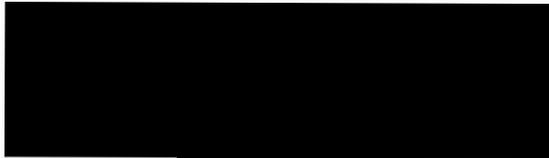
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U.S. Citizenship
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Services

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FILE:



MSC 01 345 62670

Offices: GARDEN CITY

Date: NOV 28 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 in Garden City, New York. 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 evidence submitted by the applicant is sufficient to establish that he has resided in the United States continuously in an unlawful status during the requisite period 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).

“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 February 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 10, 2001. As evidence of his residence in the United States during the years 1981-1988, the applicant submitted the following documentation:

- A letter of employment from [REDACTED] owner of B.M. Contracting Company in Astoria, New York, dated November 2, 1987, stating that the applicant resided at [REDACTED] was employed as a full time “helper” from September 1981 to October 12, 1987, and was paid \$230.00 per week.
- A letter from [REDACTED] president of The [REDACTED] Society, Inc. in Richmond Hill, New York, dated February 3, 2002, stating that the applicant has been a member of the congregation since 1980, that he attended the Gurudwara (church) regularly, and was an active participant in community activities.

A notarized statement from [REDACTED] dated September 6, 2002, stating that he has known the applicant since 1982, and that the applicant lived with him at [REDACTED]

- A notarized statement from [REDACTED], a resident of Flushing, New York, dated October 19, 2002, stating that he has known the applicant since 1985, and that the applicant resided at [REDACTED]

In a Notice of Intent to Deny (NOID), dated November 21, 2006, the director discussed various inconsistencies and deficiencies in the evidence of record which cast doubt on the applicant's claim to have continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant failed to respond to the NOID and on April 24, 2007, the director issued a Notice of Decision denying the application for the reasons stated in the NOID.

On appeal, counsel offers explanations for some of the evidentiary issues cited by the director and asserts that the director failed to properly evaluate the evidence submitted by the applicant. In counsel's view, the evidence submitted by the applicant is sufficient to establish that he resided continuously in the United States from before January 1, 1982 through May 4, 1988. Counsel submits affidavits from two prior affiants, [REDACTED] restating essentially what they previously stated in their affidavits from 2002. Counsel submits one additional affidavit from [REDACTED] a resident of Richmond Hill, New York, dated May 19, 2007, stating that he has known the applicant since 1981.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.

A copy of the applicant's expired Indian passport in the file indicates that he was issued a passport [REDACTED] on February 7, 1985, in Jalandhar, India. This evidence appears to show that the applicant was in India at the time the passport was issued. There is no evidence in the record to explain how the applicant acquired the passport any other way. On a Form I-687 (application for status as a temporary resident) he filed in 1991, however, the applicant indicated

one absence from the United States in June and July 1985. The applicant did not indicate any other absence(s) from the United States in the 1980s. The information on the applicant's passport and the absence of any objective evidence to establish when the applicant entered the United States cast doubt on the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The employment letter from Amjad Ali, dated November 2, 1987, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not state the applicant's duties except to describe him vaguely as a "helper," did not indicate whether the information was taken from company records, and did 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. In addition, the letter contains no stamp by a notary public or any other official mark to authenticate that it actually dates from November 2, 1987. Thus, the letter is not persuasive evidence that the applicant resided in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The letter from the president of The Sikh Cultural Society, Inc. in Richmond Hill, New York, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter from [REDACTED], dated February 3, 2002, vaguely stated that the applicant has been a member of their congregation since 1980, but does not state where the applicant lived at any point in time between 1980 and 1988, does not indicate how and when Mr. [REDACTED] met the applicant, and does not state whether the information about the applicant's membership and activities at the center was based on [REDACTED] personal knowledge, the Cultural Society's records, or hearsay. Since the letter does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letter has little 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 very little input from the affiants. None of the affiants provided any information about the applicant's life in the United States, such as where he lived and worked during the 1980s, or the nature and extent of their interaction with the applicant over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationship with the applicant in the United States during the 1980s. In addition, [REDACTED] did not state that he knew the applicant before 1984. 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.

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.