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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted]  
MSC 02 171 60956

Office: NEW YORK

Date: **SEP 02 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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** On April 7, 2007, the District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit credible documents to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988. The director concluded that the applicant's first entry to the United States was most likely on June 12, 1989. The director noted that the applicant's absence from the United States from May 17, 1985, to September 10, 1986, far exceeded the regulatory limits defined in 8 C.F.R. 245a.4(b)(8), and that the applicant had not established an emergent reason to justify his break in continuous residence.

On appeal, counsel asserts that the director failed to consider the totality of the evidence and to consider other documentary evidence submitted in support of the application, including affidavits and employment letters.

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 and 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 period, 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 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 states 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 or 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 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). See 8 C.F.R. § 245a.15(b). 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.13(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden, establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon 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.

The record reflects that on March 20, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 6, 2006, the applicant appeared for an interview based on the application.

The applicant has provided the following evidence relating to the requisite period:

Letters and affidavits

- A letter dated June 11, 2004, from [REDACTED] Mr. [REDACTED] provides his current address in Brooklyn, New York, and states that he knows the applicant from India. He states that the applicant has been in the United States since 1981 and that the applicant lived in his building at [REDACTED] Brooklyn, New York, from 1981 to 1982. He states that the applicant is a person of good moral character. This letter can only be given minimal evidentiary weight as to the applicant's continuous residence. Mr. [REDACTED] does not provide a specific date

when he met the applicant and does not provide any specific details of the circumstances of the applicant's residence in the United States;

- Two nearly identical "Affidavits" sworn to in February 2002. The affidavits, signed by [REDACTED] and [REDACTED] both provide the affiants' current addresses and indicate that the affiants are U.S. citizens. The affiants, using identical language, indicate that the applicant is known to the affiant since 1981 and that to the best of the affiant's knowledge, the applicant has been living in the United States ever since. The affiants then make a brief comment about the applicant's character. These letters can also be given only minimal evidentiary weight. Neither of them claims any personal knowledge of the applicant's arrival in the United States, and neither indicates any personal knowledge of the circumstances of his residence. None of the affiants explain how they specifically recall the date when they first met the applicant; and,
- A letter dated January 14, 1992, signed by the manager of Dakbar Indian Restaurant in New York City. The manager states that the applicant worked part time in the restaurant as a busboy from 1981 to 1986. He states that the applicant is honest and has a superb work ethic. Little if no evidentiary weight can be given to this letter. Specifically, the employer failed to provide the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, he also failed to declare which records his information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative, state the reason why such records are unavailable.

For the reasons noted above, these letters and affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. Furthermore, while the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. Finally, these letters and affidavits can be given little if any evidentiary weight as they contradict Service records, which indicate the applicant was only in the United States as a visitor from 1985 to 1988 and that he was actually residing outside the United States during the statutory period. (*See* the analysis below).

The record of proceedings contains other documents, including a Form I-94, Departure Record indicating a June 12, 1989, entry into the United States at New York, New York, as a B-2 visitor for pleasure. These documents all indicate physical presence after May 4, 1988, and do not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection in October 1981, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

Furthermore, the applicant's absences from the United States created breaks in his required continuous residence. The applicant has provided inconsistent oral written testimony about when, why, and for how long he left the United States. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record reflects that the applicant first entered the United States on , using a validly issued B-2 visitor's visa. However, the applicant has not established that he continuously resided here prior to January 1, 1982, and it appears that the applicant did not continuously reside in the United States thereafter.

The applicant, through counsel attests that he left the United States and reentered on the following dates:

1. Departure: April 1985  
Re-entry: May 1985
2. Departure: August 1986  
Re-entry: September 1986
3. Departure: July 1987  
Re-entry: August 1987
4. Departure: July 1988  
Re-entry: August 1988
5. Departure: May 1989  
Entry: June 1989

These dates of departure from the United States and reentry into the United States contradict existing CIS records. The only documentation submitted by the applicant of his claimed

departures and reentries into the United States is a Form I-94, indicating an entry on June 6, 1989.

CIS records reflect the following dates of entry and departure for the applicant:

1. Admission Number: [REDACTED]  
Entry: May 6, 1985  
Departure: May 17, 1985
2. Admission Number: [REDACTED]  
Entry: September 10, 1986  
Departure: September 29, 1986
3. Admission Number: [REDACTED]  
Entry: August 3, 1987  
Departure: August 11, 1987
4. Admission Number: [REDACTED]  
Entry: August 22, 1988  
Departure: September 3, 1988
5. Admission Number: [REDACTED]  
Entry: September 26, 1988  
Departure: November 19, 1988
6. Admission Number: [REDACTED]  
Entry: June 12, 1989.

No further entries exist in Service records and the applicant does not submit evidence of any further entries or exits. According to CIS records, the applicant entered the United States four times during the statutory period as a B1/B2 visitor. In May 1985, he remained in the United States for about 11 days. He departed and was outside the United States from May 17, 1985, for 481 days, until his return on September 10, 1986. On this visit he remained in the United States for about 19 days. He departed and was outside the United States for 308 days, until his return on August 3, 1987. He remained in the United States for about eight days. He left on August 11, 1987, and was outside the United States for 377 days, until he re-entered on August 22, 1988.

This evidence establishes that the applicant broke his required continuous residence in two ways. First, the applicant's absences from the United States during the statutory period each exceeded 45 days. From May 17, 1985, to September 10, 1986, he was absent for 481 days. From September 29, 1986, to August 3, 1987, he was absent for 308 days. And, from August 11, 1987, to August 22, 1988, he was absent for 377 days. Second, the aggregate of the applicant's absences exceeded 180 days between January 1, 1982, through the date his application was filed. The applicant's absences broke his required continuous residence. According to 8 C.F.R.

§ 245a.15(c)(1), an applicant for adjustment of status under the LIFE Act shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The applicant has not asserted nor has he submitted evidence to establish that his absences were for emergent reasons.

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 applicant's reliance on affidavits alone, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States 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.