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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: NEW YORK Date: SEP 0 8 2008

MSC 02 130 60363

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. 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.

for 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 District Director (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 in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988.

On appeal the applicant resubmits copies of some documents already in the record.

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.)

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 May 1980, filed his application for permanent resident status under the LIFE Act (Form I-485) on February 7, 2002. At that time the evidence of the applicant's residence in the United States between May 1980 and May 4, 1988 consisted of the following documentation, which had been submitted in 1990 in conjunction with an application for temporary resident status (Form I-687) and a "Form for Determination of Class Membership in CSS v. Meese":

A money order receipt from the Chase Manhattan Bank in New York, dated December 8, 1980, for the payment of $1,000.00 from the applicant to

An undated letter from i, the manager of . Indian Restaurant in New York City, stating that the applicant was employed as a dishwasher from May 15, 1980 to March 15, 1985, starting at $2.50/hour and ending at $4.75/hour.

An undated letter from the proprietor of General Contracting Co. in Brooklyn, New York, stating that the applicant was employed as a construction worker from May 20, 1985 to October 12, 1989, starting at $35/day and ending at $60/day.

- An affidavit by a resident of Jamaica, New York, dated August 10, 1990, who appears to claim personal knowledge that the applicant resided in Bronx, New York, from August 1980 to July 1985, and in Elmhurst, Queens, New York, from July 1985 to December 1989 (though the affiant mistakenly inserted his own name in the space on the document where the applicant's name should have appeared).

After the filing of the current Form I-485 in 2002 the applicant submitted some additional documentation at his interview for LIFE legalization on February 5, 2004, including:

Five photographs with various people, including the applicant, appearing therein – two of which have date stamps on the back reading "Sept. 1980," two of which have date stamps on the back reading "April 1981," and one of which is undated.

- A registered envelope addressed to postmarked June 9, 1981.

At a subsequent interview on April 21, 2005, the applicant submitted additional evidence of his residence in the United States between May 1980 and May 4, 1988, consisting of the following documentation:

A photocopied money order receipt from Jamaica Savings Bank in New York, dated April 8, 1987, for the payment of $1,000.00 from the applicant to

- A photocopied affidavit on the letterhead of C & B Royal Construction Co. in Bronx, New York, signed by the owner and dated November 3, 1992, stating that the applicant was employed as a bricklayer from June 1, 1986 to September 19, 1990.

- An affidavit by a resident of Jamaica, New York, dated October 29, 2001, stating that he has known the applicant since August 1981 and that the applicant had visited his home on a monthly basis over the past 20 years.

An affidavit by , a resident of Bronx, New York, dated October 29, 2001, stating that he has known the applicant since July 1980, and that the applicant had visited his home on a monthly basis over the past 21 years. Another affidavit by (different spelling, same person) , dated April 11, 2005, stating that he has known the applicant since 1982, at which time he was living at in Bronx.

An affidavit by , a resident of Richmond Hill, New York, dated April 10, 2005, stating that he has known the applicant since 1985, at which time he was living at in Elmhurst, New York.

Subsequent to his interview the applicant submitted a letter from , general secretary of the Sikh Cultural Society, Inc. in Richmond Hill, New York, dated May 19, 2005, stating that the applicant has been a member of the organization since 1981-82, participating in congressional and sanitary services.

On July 6, 2007 the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record did not establish the applicant's continuous residence in the United States

during the requisite period for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

In response the applicant submitted the following documentation:

A personal affidavit, dated July 30, 2007, reiterating his claim to have entered the United States in May 1980 and resubmitting previously submitted evidence thereof, including the photographs from 1980 and 1981, the **check receipt from** the Chase Manhattan Bank in New York payable to his father, dated December 8, 1980, and the registered envelope addressed to his father in India, postmarked June 9, 1981.

- An affidavit by , now a permanent legal resident of the United States living in Bronx, New York, dated July 30, 2007, stating his son, the applicant, sent him a certified check from Chase Manhattan Bank to Punjab, India, in December 1980, and did so on several occasions in 1980 and 1981.

On August 27, 2007 the director issued an Amended NOID, citing various discrepancies in the evidence of record and giving the applicant an additional 30 days to submit further evidence. The applicant did not respond to the Amended NOID.

On October 12, 2007 the director issued a Notice of Decision denying the application. The director reiterated the evidentiary discrepancies cited in the Amended NOID, some of which undermined the applicant's claim of continuous residence in the United States from before January 1, 1982 through May 4, 1988, the requisite period for LIFE legalization. For example, the director referred to the Form I-687 the applicant signed on August 8, 1990, in which he stated that his only absence from the United States during the 1980s was a trip to India from July 27 to August 30, 1987. This information appeared to conflict with documentation showing that the applicant's passport at that time was issued in Jalandhar, India, on March 8, 1987. The director noted that if the applicant was issued a passport in India in March 1987 and did not return to the United States until August of that year (an absence of over 45 days), he would have interrupted his continuous residence in the United States, as defined in 8 C.F.R. § 245a.15(c)(1), without demonstrating that "emergent reasons" accounted for the lengthy absence. The director also indicated that the applicant's claim of employment at the NUPUR Restaurant from May 1980 to March 1985 could not be verified because an investigation conducted in 1991-92 revealed that the site was a parking lot. The director also stated that one of the money order receipts in the record (without specifying whether it was the one from 1980 or 1987) appeared to be fraudulent because the date was apparently typed rather than engraved. The director concluded that the applicant had failed to establish his continuous residence in the United States during the requisite period for legalization under the LIFE Act.

The applicant filed a timely appeal and resubmitted copies of the documentation submitted in response to the original NOID. No new evidence was submitted in support of the appeal. Nor did the applicant dispute any specific findings by the director in the decision.

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 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.

Of the five photographs in the record, which appear to picture the applicant among other persons, at least four are reliably from 1980 and 1981 as evidenced by their date stamps on back. The applicant does not indicate where any of the photographs were taken, however, and none contain an unmistakable landmark to positively identify their location. Even if the photos were taken in the New York area (where the applicant claims to have been living as of May 1980), they do not establish that the applicant was actually residing in the United States at that time, as opposed to visiting.

As for the money order receipts from the Chase Manhattan Bank (December 8, 1980) and the Jamaica Savings Bank (April 8, 1987), even if they are genuine they do not necessarily establish that the resident was residing in the United States at those times because they do not identify any address for him in the United States. The registered mail envelope addressed to the applicant's father in India, postmarked June 9, 1981, is even less probative because it does not identify the applicant as the sender, much less any address for the sender in the United States.

With regard to the employer letters in 1990 from the manager of NUPUR Restaurant in New York (stating that the applicant was employed as a dishwasher from May 15, 1980 to March 15, 1985) and the proprietor of [redacted] General Contracting Co. in Brooklyn (stating that the applicant was employed as a construction worker from May 20, 1985 to October 12, 1989), as well as the affidavit in 1992 from the owner of C & B Construction Co. in Bronx (stating that the applicant was employed as a bricklayer from June 1, 1986 to September 19, 1990), none comported with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records are available for review. Nor has the applicant furnished any pay statements, tax records, or related evidence to support his employment claims. The AAO also notes that the applicant did not list C & B Construction Co. as one of his employers in the United States during the 1980s on the Form I-687 he signed in August 1990.

In a similar vein, the letter from [redacted] of the Sikh Cultural Society 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 May 19, 2005, does not state precisely when the applicant became a member, offering only vague information that he has been a member since "1981-82." While stating the applicant's current address, the letter does not indicate where the applicant lived over the years since 1981. Nor does the letter indicate how [redacted] knows the applicant personally, and whether his information about the applicant being a member of the organization since 1981-82 is based on personal knowledge, church records, or hearsay. Since [redacted] 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 it has little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the other affidavits in the record – prepared between 1990 and 2005 by individuals who claim to have met the applicant in New York in 1980, 1981, or 1985, and remained friends over the years – they all have minimalist or fill-in-the-blank formats with little personal input from the affiants. Considering how long the affiants claim to have known the applicant, the affidavits contain remarkably few details about the applicant's life in the United States and the affiants' interaction with him over the years. Nor were the affidavits supplemented by any documentation from the affiants confirming their own presence in the United States during the 1980s. Thus, the affidavits have little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the entire record, it appears that the applicant may have been in the United States for some of 1980 and 1981. It is noteworthy, however, that the applicant has produced virtually no primary or secondary evidence of his residence in the United States during the time frame of January 1, 1982 through May 4, 1988 – the requisite period for LIFE legalization. Nor has the applicant addressed any of the evidentiary discrepancies discussed by the director in the denial.

The AAO concludes, therefore, 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. 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.