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U.S. Department of Homeland Security  
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Washington, D.C. 20529



U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[REDACTED]

FILE:

[REDACTED]

MSC 02 213 60590

Office: SACRAMENTO

Date: SEP 09 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. 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.

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

The director denied the application because the applicant had failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act. The director also denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, counsel puts forth a brief disputing the director’s findings.

The first issue that will be addressed is whether the applicant failed to satisfy the “basic citizenship skills” required under the LIFE Act.

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding basic citizenship skills, an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the [Secretary of Homeland Security]) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Secretary of Homeland Security may waive all or part of the above requirements for applicants who are at least 65 years of age or who are developmentally disabled. *See* 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Immigration and Nationality Act (Act) by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 – 312.3.

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. 8 C.F.R. § 245a.17(a)(2). The high school or GED diploma may be submitted either at the time of filing the Form I-485 LIFE Act application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the

standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after six months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. 8 C.F.R. § 245a.17(b).

The record reflects that the applicant was interviewed twice in connection with his LIFE application, on May 19, 2004, and again on December 1, 2004. On the first occasion, the applicant was unable to understand sufficient English to be placed under oath and the interview was terminated. On the second occasion, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

At the time of his first interview, the applicant was given a notice, which informed him that he would be afforded a second opportunity for an interview and testing of his citizenship skills. The notice advised the applicant that in lieu of testing, he may submit evidence of a high school or GED diploma, or submit on letterhead stationery from a state recognized, accredited learning institution certification that he is attending or has attended such institution and that the course of study is for a period of one academic year and the curriculum includes at least 40 hours of instruction in English and United States history and government.

At the time of his second interview, the applicant informed the interviewing officer that he was not attending any courses in English and United States history and government and the applicant did not present evidence of a high school or GED diploma.

On December 22, 2004, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to pass the English literacy and United States history and government tests. The applicant was given the opportunity to submit evidence that would overcome the basis for denial of his application. Neither counsel nor the applicant addressed this issue in response to the notice.

On appeal, counsel asserts that the director "failed to ask the applicant about any disability that may have had an impact on his ability to qualify for the civics tests." Counsel asserts that the director may waive the requirements as set forth in 8 C.F.R. § 245a.17(c).

Counsel's assertion has no merit because the applicant was neither 65 years or older on the date of filing his LIFE application nor did he submit any evidence establishing that he was developmentally disabled as defined under 8 C.F.R. § 245a.2(v). The applicant, therefore, did not meet any of the waiver requirements defined in 8 C.F.R. § 245a.17(c). The burden is upon the applicant to prove that he meets the waiver requirements defined in 8 C.F.R. § 245a.17(c).

On appeal, counsel submits a Form N-648, Medical Certification for Disability Exception, signed by [REDACTED], a medical doctor, on April 25, 2006, who indicated that he was an “internist with 30 years of direct care for similar cases.” The doctor indicated that the applicant “has been seen only several time [sic] for his depression [sic] and has been evaluated for headache [sic], insomnia, anxiety neurosis, tension and pain.” The doctor’s clinical diagnosis of the applicant’s impairment indicates the applicant “has post traumatic stress disorder, poor memories, deep depression associated with chronic disabling disease and severe burn.” Based on the examination of the applicant, the doctor’s concluded, in pertinent part:

The patient, [the applicant] is a 63 year old depressed male from India who suffers from multiple mental and physical impairments including severe chronic depression, insomnia and memory loss that has been causing him difficulties to concentrate and work. His chronic depression and insomnia cause cognitive deficits and abnormal neurological symptoms resulting in an inability to concentrate and marked memory loss that have been aggravated by his level cholesterol and blood pressure. He needs help taking medications and is no longer interested to participate in his family gathering and affairs. In addition his psychological disabilities, particularly his depression, he also has bad dreams, mood changes that adversely impaired his mental condition and his ability to function normal. His chronic inappropriately treated post traumatic stress disorder and impairment to his brain and caused him to have permanent and irreversible mental and memory changes that continuously getting worse and causing him difficulties to function and work regularly. As a result of the patient’s combined mental and medical impairments, he is frail, weak, and unable to concentrate study and learn simple words, grammar, basic facts or concepts necessary to pass the English and history/civic requirements for citizenship.

The regulation at 8 C.F.R. § 245a.2(v) defined *developmental disability* as a severe, chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
- (5) Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

In order to meet the waiver requirement for an individual who is developmentally disabled, an applicant must meet *all* the criteria defined in 8 C.F.R. § 245a.2(v). In the instant case, the applicant has not established that he has met *all* the criteria of an individual who is developmentally disabled and, therefore, does not meet the waiver requirement under 8 C.F.R. § 245a.17(c)(ii).

We now look to the exception requirement under 8 C.F.R. §§ 312.1(b)(3) and 312.2(b) in order to determine if the applicant qualifies for the same exceptions as those listed for naturalization applicants.

The regulation at 8 C.F.R. § 312.1(b)(3) defines *medically determinable*, in pertinent part, as:

An impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency, as outlined in paragraph (c) of this section.

The regulation at C.F.R. § 312.2(b)(1) defines *medically determinable*, in pertinent part, as

An impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate the knowledge required by this section, or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.

The applicant has not established that the impairments outlined in the Form N-648 meet the requirements of the regulations cited above.

The applicant does not satisfy either alternative of the “basic citizenship skills” requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. The applicant also does not satisfy either the waiver or exemption requirement set forth in 8 C.F.R. § 245a.17(c) and 8 C.F.R. §§ 312.1(b)(3) and 312.2(b). Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The second 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 during the requisite period

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(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 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.* 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).

Along with his LIFE application, the applicant only submitted two notarized affidavits from [REDACTED] and [REDACTED] of Orange, California who indicated that they have known the applicant for the last 40 years. The affiants asserted that they met the applicant in a Gurdwara assembly in New York in July 1982.

On April 8, 2004, and November 15, 2004, the director issued a Form G-56, which advised the applicant of his scheduled interview on May 18, 2004 and December 1, 2004, respectively. Each form advised the applicant to bring with him evidence of his continuous residence in the United States during the requisite period. The applicant, however, did not submit any additional evidence to establish his continuous residence during the period in question.

In issuing his Notice of Intent to Deny, the director informed the applicant that the evidence provided only served to establish his residence in the United States since 1989. The applicant was advised that he had failed to submit credible evidence to establish his residence in the United States during the requisite period. The director noted that: 1) the applicant's birth certificate with English translation was indecipherable due to its print quality; 2) the applicant provided a divorce decree dated December 11, 1997; however, he did not claim to have been married on his Form G-325, Biographic Information, and therefore it could not be determined if he was married during the requisite period;<sup>1</sup> and 3) the affidavits from [REDACTED] and [REDACTED] were unverifiable because the affiants did not list a telephone number.

Counsel, in response, disputed the director's finding that the affidavits were unverifiable as each affiant listed their address on their respective affidavit. Counsel argued that the director ignored the affidavit provided by [REDACTED]. A thorough review of the record, however, does not contain an affidavit from this affiant. It is noted that counsel in his letter dated April 26, 2002, which outlined the documents that were accompanying the LIFE application, did not list an affidavit from [REDACTED].

Counsel submitted:

- A statement dated January 10, 2005, from [REDACTED] of Turlock, California, who indicated that he met the applicant at Sikh Temple in Stockton, California in 1982. The affiant asserted that he has remained good friends with the applicant since that time.
- A statement dated January 10, 2005, from [REDACTED] of Turlock, California, who indicated that he has known the applicant since 1985. The affiant asserted that he was introduced to the applicant by [REDACTED] and has remained good friends with the applicant since that time.

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<sup>1</sup> The applicant's prior alien registration file ([REDACTED] 2) contains a copy of a marriage certificate indicating that he was married on August 16, 1995.

It is noted that on April 12, 2005, Citizenship and Immigration Services (CIS) contacted both affiants by telephone. According to the interviewing officer's notes, [REDACTED] indicated that the applicant entered the United States a few months after his initial entry in 1981 [REDACTED] indicated that he had known the applicant since childhood; that in 1981, the applicant had sent a letter from the United States, but he was unable to locate the letter; and that the applicant had resided with him in 1987.

The director, in denying the application, noted that the applicant has put forth several inconsistencies that undermined his credibility to have resided in the United States since before January 1, 1982 through May 4, 1988. Specifically, CIS obtained the alien registration files of [REDACTED] and [REDACTED] along with the applicant's prior alien registration file ([REDACTED]) and it was revealed that [REDACTED] first entered the United States in August 1982 and had resided in his native country, India, from June 1, 1959 until August 1982,<sup>2</sup> and the applicant, in his prior alien registration file, resided in Lomita, California from February 2, 1986 through February 17, 1994. The director determined that the affidavits from [REDACTED] and [REDACTED] had no probative value.

On appeal, counsel, once again refers to an affidavit from [REDACTED] and argues that CIS failed to consider the affidavit. As previously noted, the record did not contain this affidavit at the time the LIFE application was presented or in response to the Notice of Intent to Deny. As such, CIS cannot consider a document that has not been submitted.

On appeal, counsel submits copies of the affidavits that were previously submitted along with an original notarized affidavit from [REDACTED] who indicated that he met the applicant in 1988 at a Sikh Temple in Fremont, California and has visited the applicant on occasion since that time.

Counsel argues that the CIS "has provided no substantial reason to discredit the authenticity, veracity and reliability of the affidavits [the applicant] has provided in support of his application."

Regarding the affidavit from [REDACTED] counsel asserts, "[t]he affiant is correct in stating that he met the applicant "a few months" after his initial entry in 1981. We do not know if the Service asked the affiant if he had entered the United States prior to his trip in August 1982." Counsel contends that CIS has no logical and/or cogent reason to discredit [REDACTED]'s affidavit and statements contained therein because of a minor inconsistency."

Regarding the affidavit from [REDACTED] counsel asserts, "the affidavit clearly and convincingly attests to fact that the affiant has been acquainted with the applicant since 1985," and the CIS failed to ask the affiant about the length of the applicant's stay at his residence in 1987. Counsel contends that the affiant's testimony that he lived with the applicant in 1987 "does not necessarily mean that the applicant resided with him for the entire year."

Counsel asserts that CIS does not have established guidelines for submission of supporting documents nor did it confront the affiants and applicant with any inconsistencies and/or discrepancies.

CIS has determined that affidavits from third party individuals may be considered as evidence of continuous residence. See *Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such

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<sup>2</sup> The information was retrieved from the affiant's Form I-589, Application for Asylum and Withholding of Removal.

affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided.

The statements issued by counsel have been considered. The AAO, however, does not view the affidavits from [REDACTED] and [REDACTED] as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982, as the affiants claimed to have met the applicant in 1982 and 1988, respectively and, therefore, they cannot attest to the applicant's alleged residence in the United States prior to January 1, 1982. Further the affiants failed to state the applicant's place of residence during the requisite period, and the basis for their continuing awareness of the applicant's residence.

The AAO also does not view the affidavits from [REDACTED] and [REDACTED] as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as the applicant has presented contradictory and inconsistent documents, which undermines his credibility.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the inconsistencies outlined by the director. However, no statement from [REDACTED] has been submitted to dispute the director's findings or to corroborate counsel's statements. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

These factors raise significant issue to the legitimacy of the applicant's residence during the period in question.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the existence of conflicting testimony that contradicts critical elements of the applicant's claim of residence for the requisite period seriously undermine the credibility of this claim, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously from before January 1, 1982, through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act. The appeal will be dismissed for the above stated reasons, with each considered as an

independent and alternative basis for dismissal.

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).

A review of the applicant's prior alien registration file, [REDACTED] contains a copy of his passport that indicates he previously traveled on passport number [REDACTED] on September 18, 1986. Item 35 of the Form I-687 application requests the applicant list all absences from the United States since his entry. The applicant listed only one absence from the United States; September 18, 1987 to October 11, 1987. Likewise, on his Form for Determination of Class Membership signed by the applicant on March 21, 1990, the applicant was requested to list each trip abroad, and once again the applicant only listed an absence in September 1987.

The applicant's prior alien registration file, [REDACTED] also contains a Form I-130, Petition for Alien Relative, and a Form I-485 filed on his behalf by his former spouse on September 19, 1996,<sup>3</sup> and a Form I-130, filed on his behalf by his son on June 7, 2007. Both affiants indicated that the applicant entered the United States without inspection on May 6, 1987.

The applicant's failure to disclose these absences from the United States is a strong indication that the applicant was not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation. This further undermines the credibility of the applicant's claim to have continuously resided in the United States since before January 1, 1982, through May 4, 1988.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.

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<sup>3</sup> This Form I-485 application was filed under alien registration number [REDACTED]