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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

L2

[REDACTED]

FILE:

[REDACTED]

MSC 02 156 61503

Office: NEW YORK

Date:

SEP 22 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 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 continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director did not properly consider the affidavit evidence submitted by the applicant, and contends that it establishes the applicant's continuous residence in the United States since 1981.

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).

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 applicant, a native of India who claims to have resided in the United States since May 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on March 5, 2002. The application was accompanied by five affidavits prepared in February 2002, which included:

An affidavit by [REDACTED] a resident of Jackson Heights, New York, dated February 4, 2002, stating that the applicant was his neighbor at [REDACTED] for a few months in 1981, and would come to congregational prayer services in his room.

- An affidavit by [REDACTED], a resident of East Hartford, Connecticut, dated February 13, 2002, stating that the applicant stayed with him for two months at [REDACTED] when he first came to the United States in 1981.
- An affidavit by [REDACTED] a resident of Bronx, New York [REDACTED] [REDACTED] dated February 14, 2002, stating that he has known the applicant in the United States since 1981.

An affidavit by [REDACTED] a resident of New York City, dated February 13, 2002, stating that he has known the applicant since 1985, and that the applicant used to deliver the newspaper to him and collect monthly payments.

An affidavit by [REDACTED] a resident of Bronx, New York, dated February 15, 2002, stating that he met the applicant while traveling on a commuter train from Kingsbridge to Manhattan in 1985, and that the applicant delivered papers to his workplace, DeWitt Rehabilitation & Nursing Center, and collected payments monthly.

On April 30, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the affidavit evidence lacked sufficient credibility to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID the applicant supplemented the affidavits with some identification documents from three of the affiants.

On June 8, 2007, the director issued a Notice of Decision denying the application. The additional documentation did not overcome the grounds for denial as discussed in the NOID, the

director declared, and failed to establish the applicant's continuous unlawful residence in the United States during the requisite period for legalization under the LIFE Act.

On appeal counsel asserts that the director did not give proper weight to the affidavits submitted by the applicant, which are credible and verifiable according to counsel, and establish the applicant's continuous residence in the United States since 1981.

The issue in this proceeding is whether the applicant has furnished sufficient probative 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.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite time period for LIFE legalization. For someone claiming to have lived in the United States since May 5, 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary or secondary evidence during the following seven years through May 4, 1988.

With regard to the five affidavits from February 2002, they all have minimalist formats that provide few details about the applicant's life in the United States and his interaction with the affiants during the years 1981 to 1988. Two of the affiants – [REDACTED] – do not even claim to have known the applicant before 1985. A third affiant – [REDACTED] – says only that he has known the applicant in the United States since 1981, with no further information. The other two affiants – [REDACTED] – claim to have met the applicant when he first arrived in the United States in 1981, but do not state anything about their relationship, if any, in subsequent years. Moreover, the addresses that [REDACTED] and [REDACTED] identified as two of the applicant's residences during his early months in this country [REDACTED] Connecticut – do not coincide with any listed by the applicant on the Form I-687 (application for temporary resident status) in his file. On the Form I-687, dated October 9, 1990, the applicant listed only one address during 1981 – [REDACTED] where he claims to have lived from August 1981 to September 1985. None of the affiants indicate where the applicant lived after 1981, and none of them identify where he was employed during the 1980s. While two of the affiants state vaguely that the applicant delivered (news)papers, they do not identify what paper it was, and whether that job was his only employment. Moreover, none of the affiants submitted any supporting documentation of their relationship to the applicant during the 1980s – such as photographs, letters, or other documents. Considering the paucity of information in the affidavits, they do not represent persuasive evidence of the applicant's continuous residence in the United States during the requisite period for LIFE legalization.

Given the lack of probative evidence in the record, the AAO determines 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, 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.