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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: PHILADELPHIA Date: APR 25 2008

MSC 02 246 66759

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:** The District Director, Philadelphia, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to establish the minimum physical presence requirement for lawful permanent residence pursuant to LIFE Legalization.

On appeal, counsel for the applicant asserts that the applicant cannot prove that he entered without inspection from Mexico. Counsel asserts that the applicant was in the United States even though his passport was issued in India. Finally, counsel asserts that the affidavits submitted are probative evidence that the applicant was unlawfully present in the United States physically and continuously since before 1981.

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – 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. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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 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 record reflects than on June 4, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On July 28, 2003, the applicant appeared for an interview based on his application.

On April 14, 2004, the director issued a Notice of Intent to Deny, (NOID), stating that the applicant had not provided sufficient documentation to establish the minimum physical presence requirement for lawful permanent residence pursuant to LIFE Legalization. The director noted that the applicant failed to present evidence that he was ever in Mexico in order to cross the border into the United States. The director also noted that the passport he brought to his interview was issued in India on a date when the applicant claimed to be in the United States. The director informed the applicant that he had 30 days from the receipt of the NOID to submit evidence to overcome the director's intent to deny his application.

In response to the NOID, the applicant submitted three additional affidavits from individuals who knew the applicant. Counsel for the applicant asserted that these affidavits established the applicant's physical presence in the United States since 1981. Counsel noted that the applicant's son had recently died in India and that his surviving family members were in crisis mode. Counsel did not address the discrepancy between the fact that the applicant's passport was issued to him in India and the applicant's testimony that he was in the United States at the time.

On September 23, 2004, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel for the applicant asserts that the applicant cannot prove that he entered the United States from Mexico because he entered without inspection. Counsel asserts that the applicant was in the United States even though his passport was issued in India. Finally, counsel asserts that the affidavits submitted are probative evidence that the applicant was unlawfully present in the United States physically and continuously since before 1981.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he was continuously physically present in the United States during the requisite period. The only relevant documentation the applicant submitted in support of his Form I-485 application was the two letters of employment and the passport mentioned above.

The applicant submitted various documents as well as several affidavits as evidence to support his Form I-485 application. Some of the evidence submitted is either undated or indicates that the applicant resided in the United States after his last entry without inspection, near San Diego, California, in January 1988, and is not probative of residence before that date. The following evidence relates to the requisite period:

Affidavits

- The record of proceeding contains a fill-in-the-blank affidavit from [redacted]. Ms. [redacted] stated that she had known the applicant and his wife since August 1981. Ms. [redacted] stated that, at the time the affidavit was written, the applicant and his wife resided in Philadelphia, Pennsylvania, and had resided there since May 1, 2002. Ms. [redacted] stated that she and the applicant were both family members who often visited each other's residences and who occasionally visited during religious and other social events and gatherings.

- The applicant submitted an affidavit from [redacted] Mr. [redacted] stated that he is employed by the New York City Police Department. He stated that he has known the applicant since approximately 1981. He stated that the applicant came to the United States in 1981 and has lived here since 1981. He stated that he first met the applicant in an Asian Parade in Manhattan and that they have remained friends ever since. Mr. [redacted] listed the address where he was living at the time he met the applicant.

- The applicant also submitted two fill-in-the-blank affidavits from [redacted], and [redacted], who stated that they first met the applicant in September 1981 through [redacted] in Jersey City, New Jersey. Both affiants stated the addresses where they were living at the time they met the applicant.

These affidavits can be given little evidentiary weight as they are not sufficiently detailed. The affiants stated where they lived when they met the applicant but did not state that they had knowledge of where the applicant lived at that time. None of the affiants provided details about how frequently or the circumstances under which they saw or spoke to the applicant. The affidavits from [redacted] and [redacted] suggest that the applicant was physically present in the United States briefly in 1981, but do not provide sufficient detail to establish that he resided continuously and was continuously physically present at the time or thereafter.

Finally, the applicant has not resolved the inconsistency the director mentioned between the date the applicant's passport was issued in India and the applicant's testimony that he was in the United States on that date. On appeal, counsel asserts that the applicant called and asked for a passport via telephone, then mailed his identification to the Indian consulate in India, and that the passport was then mailed to the applicant in the United States. First, it is counsel who submits a written explanation of this discrepancy, not the applicant. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Second, the applicant has not explained why he requested a passport from India while he was residing in the United States, instead of requesting one from the Indian consulate in the United States. Also, the applicant has not provided documentation, such a letter from the issuing authority in India or the Indian consulate in the United States, corroborating that this is a valid method for Indian citizens to obtain a passport while living in the United States. It is incumbent upon the petitioner 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 applicant has neither explained the inconsistency nor has he provided independent objective evidence to help resolve the inconsistency.

The record of proceedings contains various other documents, including a Social Security statement indicating earnings from 1991 to 2000; mail dated in 1990; and, a 2001 credit card statement. None of this evidence addresses 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 last entered the United States in January 1988, near San Diego, California, and to have resided for the duration of the requisite period in New Jersey and Pennsylvania. 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.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is 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.