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

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JUL 30 2008

MSC 02 205 61537

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, New York, New York, 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 submit credible evidence to prove his unlawful status prior to January 1, 1982, and of his residence in the United States during the statutory period. The director found that the applicant was not living in the United States prior to January 1, 1982. The director noted that during his interview, the applicant stated that his first and only trip outside the United States was in 1987. The director noted that the birth certificate of the applicant's child indicated that the child was born on October 20, 1982, in India. The director noted that the applicant did not submit any evidence of his wife's physical presence in the United States. The director concluded that the applicant must have been in India at the time of conception of his children. The director found that the statement from the applicant's wife submitted in response to the Notice of Intent to Deny (NOID) was self-serving and not amenable to verification. The director found that during his interview, the applicant never stated that his wife resided with him in the United States at any time. The director stated that is was clear that the applicant must have been in India at the time of conception of his children and that he changed the events to explain away the inconsistencies found during the review of the file. The director concluded that there was no proof that the affiant was residing in the United States during the requisite time period.

On appeal, counsel for the applicant asserts that the affidavit of the applicant's wife and the other evidence in the file support's the applicant's contention that he was in the United States during the relevant period and that he qualifies under the LIFE Act. He submits an additional receipt.

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 April 23, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 24, 2004, the applicant appeared for an interview based on his application.

On March 10, 2006, the director issued a NOID. The director found that the applicant was not living in the United States prior to January 1, 1982. The director noted that during his interview, the applicant stated that his first and only trip outside the United States was in 1987. The director noted that the birth certificate of the applicant's child indicated that the child was born on October 20, 1982, in India. The director noted that the applicant did not submit any evidence of his wife's physical presence in the United States and did not assert that she was present during his interview. The director concluded that the applicant must have been in India at the time of conception of his children. 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, counsel for the applicant submitted an affidavit from the applicant's wife, stating that she lived in Flushing, New York, with the applicant beginning in December 1981, but that, after she

became pregnant, she traveled alone to India where she delivered a male child on October 20, 1982. She states that she returned to the United States without a visa on November 17, 1988.

On April 18, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID. Specifically, the director found that the statement from the applicant's wife submitted in response to the NOID was self-serving and not amenable to verification. The director found that during his interview, the applicant never stated that his wife resided with him in the United States at any time. The director stated that is was clear that the applicant must have been in India at the time of conception of his children and that he changed the events to explain away the inconsistencies found during the review of the file.

On appeal, counsel for the applicant asserts that the affidavit of the applicant's wife and the other evidence in the file support's the applicant's contention that he was in the United States during the relevant period and that he qualifies under the LIFE Act. He submits an additional receipt.

The issue in this proceeding is whether the applicant has provided sufficient credible evidence to demonstrate that he was continuously physically present in the United States during the requisite period.

The following evidence relates to the requisite period:

Letters and Affidavits

- A letter dated May 23, 1990, from [redacted] from the Welcome Inn in Pomona, California. states that the applicant has been working in their housekeeping department since 1981. He states that the applicant helps keep the place clean and spotless and so they have earned the good reputation they have. He states that the applicant is their best worker and that they wish him the very best. This letter can be given little evidentiary weight because it lacks sufficient detail and information required by the regulations. Specifically, the employer failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employer 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. In addition, the letters listed his positions but did not list the applicant's duties. Finally, the letter was not notarized and did not appear to be written on letterhead stationery.

- Duplicate "Affidavit of Acknowledgment of Residency" forms, dated June 26, 1990. The forms, signed by [redacted], and [redacted] list the affiants' current addresses in Coachella, California. The form allows the affiant to fill in a blank that he or she has "first hand knowledge of _____ since _____, to present." All three affiants filled in the

applicant's name and 1981 as the date they have known the applicant since. The form language states that the affiant has been aware of the applicant's continuous residency in the U.S. since the above date, and to their knowledge has never had any problems with the law, and that this person has always been gainfully employed. These affidavits, prepared on a fill-in-the-blank form, contain no details regarding any relationship with the applicant during the requisite period. None of the affiants state when, how, or where they met the applicant. They fail to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence. In addition, there is no evidence that the affiants resided in the United States during the requisite period;

- An affidavit dated June 25. 1990, signed by the applicant stating that he is aware of the departure of [redacted] from the United States on August 10, 1987 and that he returned on September 8, 1987. The applicant affirms that he knows Mr. [redacted] and affirms that his departure and arrival in this country as stated are true. This document is irrelevant to the applicant's claim of his own entry into the United States and his residence and physical presence in the United States; and,

- An affidavit dated April 10, 2006, signed by [redacted], the applicant's wife. She states that she lived in Flushing, New York, with the applicant beginning in December 1981, but that, after she became pregnant, she traveled alone to India where she delivered a male child on October 20, 1982. She states that she returned to the United States without a visa on November 17, 1988. She does not indicate any personal knowledge of the applicant's entry to the United States. She provides no details about the circumstances of their residence together in the United States prior to her return to India in 1982. Furthermore, she did not submit any evidence that she resided in the United States during this time.

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. [redacted] who claim to have knowledge of the applicant's continuous residence and continuous physical presence in the United States since 1981, provide no meaningful details about the applicant's residence in the United States. They claim no personal knowledge of the applicant's arrival in the United States, nor do they explain how they specifically recall the date when they first met him. The affidavit signed by the applicant in support of [redacted] is irrelevant to and is not considered evidence in these proceedings. The affidavit from the applicant's wife provides no details about the circumstances of her residence in the United States with the applicant and is not accompanied by corroborating contemporaneous evidence that she was physically present during the stated time period.

The only other documentation in the record consists of Internal Revenue Service (IRS) Forms 1040 Individual Tax Returns for the years 1996 to 2000, and a work letter for employment

between January 1, 2002, and February 6, 2002. This evidence does 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.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists solely of affidavits. These third-party affidavits lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from prior to 1982 through 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the insufficiency in the evidence, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, resided in this country in an unlawful status continuously since that time through May 4, 1988, and maintained continuous physical presence in the United States during the period from November 6, 1986 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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.