U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK CITY Date: APR 2 0 2009

MSC 02 030 62113

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: SELF-REPRESENTED

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.

John F. Grissom, Acting 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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. Applicant submits no additional documentation with the appeal.

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.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." (Emphasis added.) 8 C.F.R. § 245a.16(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 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 March or June 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 30, 2001.

In a Notice of Intent to Deny (NOID), dated November 13, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish his entry into the United States before January 1, 1982, and his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director noted inconsistencies in the documentation in the record with respect to the applicant's initial entry into the United States, his absences from the United States and his continuous residence in the country through May 4, 1988. The director indicated that the inconsistencies undermine the veracity of his claim. The applicant was granted 30 days to submit additional evidence.

The applicant responded and submitted additional documentation. In his response, the applicant insisted that he was not interviewed by the director and that the director could not have found inconsistencies in the record. The applicant did not submit any documentation to address the inconsistencies raised by the director in the NOID. On March 5, 2008, the director issued a

Notice of Decision denying the applicant on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal, the applicant asserts that the director did not properly evaluate the documents in the record, and that he has submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. Applicant submits no additional documentation with the appeal.

The record reflects that the applicant submitted a Medical Certification for Disability Exemption (Form N-648) requesting that he be exempt from examination on account of medical disability – limited/poor memory. The director granted the applicant the exemption and decided the application based on documentation and evidence in the record. The applicant was notified of the deficiencies in the record and was granted the opportunity to submit additional evidence to rebut or justify the deficiencies and failed to do so. Thus, AAO agrees with the director decision to decide the case based on the evidence in the record.

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 entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status during the requisite period for LIFE legalization consists of the following:

- A letter from [redacted], dated December 14, 2002, stating that the applicant was his regular patient from 1984, and that the applicant received treatment in his office in December 1987.
- An affidavit from [redacted], president of [redacted] in Flushing, New York, dated December 2002, stating that the applicant was a trainee in his store for about "8 weekends" from June 1985, and that the applicant used to visit him after completion of the training.
- An affidavit and notarized letters from three individuals who claim to have known the applicant during the 1980s.
  A letter from [redacted], in Flushing New York, dated June 10, 2003, stating that the applicant attended the temple for many years and was known to the members since 1984.

- A typed rental receipt from [redacted], dated June 30, 1986, for 1501 [redacted], Flushing, New York, for rental between June 2, 1986 and June 20, 1986.
- A merchandise receipt from [redacted]c. in Jackson Heights, New York, with handwritten notation of the applicant's name, dated December 13, 1985.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Here the submitted evidence is not probative or credible.

The record reflects that the applicant filed a Form I-687 (application for status as a temporary resident) on March 23, 1990. The applicant indicated on that form that he last entered the United States on September 8, 1987, and that he traveled outside the United States once during the 1980s – a trip to India – to visit his family, lasting from August to September 1987. The applicant did not indicate any other absences from the United States during the 1980s. A copy of the applicant's expired passport in the file, indicates on page 5 that the applicant "previously traveled on passport [number] [redacted] issued in India on 30.5.1988 . . . which has been reported lost." The information on the passport strongly suggests that the applicant must have been in India on or about May 30, 1988 when the passport was issued. Since the applicant did not indicate that he was in India sometime in 1988, the information about the previous passport casts doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuous in the country through May 4, 1988. The applicant was notified on this deficiency in the director's NOID and was offered the opportunity to submit rebuttal information but he failed to do so. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence – consisting of affidavits and letters from individuals who claim to have known the applicant during the 1980s, merchandise and rental receipts dated in 1985 and 1986 – is suspect and not credible.

The letter from [redacted]r in Flushing 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 vaguely stated that the applicant had been "attending our congregation since last many years,"

and that the applicant was known to "our congregation since 1984." The author did not state his/her name or title, did not indicate if and when the applicant became a member, did not indicate where the applicant lived at any point in time between 1981 and 1988, how and when the author met the applicant, and whether the author's information about the applicant was based on the author's personal knowledge, the temple's records, or hearsay. Since the letter does not comply with sub-parts (B), (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), it has little probative value. The letter is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The letters and affidavits in the record from individuals who claim to have treated the applicant, rented an apartment to, or otherwise known the applicant, have minimalist formats with very little input by the affiants. The authors provide remarkably little information about the applicant's life in the United States and their interaction with him over the years. Nor are the affidavits and letters accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationships with the applicant in the United States during the 1980's. The letter from [redacted] is not supplemented by any medical records to establish that the applicant received the treatments during the years specified. The letter receipt from [redacted] is not accompanied by any rental agreement or lease to show that the applicant resided at the apartment and that relationship between the applicant and [redacted]. It is noted that none of the letters and affidavits state anything about the applicant's whereabouts before January 1, 1982. None of the letters and affidavits state that they knew the applicant before January 1, 1982. In view of these substantive shortcomings, the letters and affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The merchandise receipt has a handwritten notation of the applicant's name with no date stamps or other official markings to verify the date it was written, and does not bear the applicant's address. Thus, receipt has little probative value. It is not persuasive evidence of the applicant's residence in the United States during the year 1985, much less in prior years back to before January 1, 1982 or through subsequent years to May 4, 1988.

Based on the analysis of the evidence in the record, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, and 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.