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U.S. Citizenship and Immigration Services

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FEB 03 2009

FILE: [redacted] Office: NEW YORK CITY Date:

consolidated herein]
MSC 02 005 64164

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.

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 submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status during the requisite period for LIFE legalization.

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 May 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 5, 2001.

In a Notice of Intent to Deny (NOID), dated August 3, 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. Specifically, the director indicated that the affidavits in the record were substantively deficient. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, counsel asserted that the affidavits submitted by the applicant were sufficient to establish the applicant's eligibility for LIFE legalization.

On August 22, 2007, the director issued a Notice of Decision denying the application on the ground that the response to the NOID was insufficient to overcome the grounds for denial.

On appeal counsel reiterates his contention that the director did not properly evaluate the affidavits submitted by the applicant. Counsel submits updated contact information for the affiants.

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 was continuously resident in the United States during the requisite period for LIFE legalization consists of the following:

- A letter from [redacted], president of [redacted]. of Richmond Hill, New York, dated February 11, 2002, stating that the applicant was a member of the congregation, attended the Gurdwara regularly, and was an active participant in community activities.
  Affidavits from four acquaintances, dated in 2000, 2001, and 2002, claiming to have worked with, resided with or otherwise known the applicant during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

The file contains two Forms I-485 filed on September 16, 1997 and October 5, 2001, and two Forms G-325A (Biographic Information) dated August 21, 1997 and September 18, 2001. On the Form G-325A dated September 18, 2001, which the applicant submitted with his Form I-485 on October 5, 2001, the applicant listed his last address outside the United States for more than one year as [redacted], from 1962 (year of birth) to 1980. On the earlier Form G-325A dated August 21, 1997, which the applicant filed with another Form I-485 on September 16, 1997, the applicant listed his last address outside the United States for more than one year as [redacted], from April 1962 (year of birth) to January 1993. Also in the file is a copy of the applicant's expired passport indicating on one of the pages that the applicant previously traveled on passport number [redacted] issued in Jalandhar on May 28, 1983. On a Form I-687 (application for status as a temporary resident) he filed in 1991, the applicant indicated one absence from the United States during the time period of

January 1, 1982 through May 4, 1988 – a trip to India from December 1982 to January 1983. The applicant did not indicate any other absence from the United States during the 1980s. The passport issue date of May 28, 1983, however, clearly indicates that the applicant was in India at that time. The conflicting information in the record regarding the applicant's initial date of entry into the United States and the number of his absences from the country during the years 1982 to 1988, cast doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982, and resided continuously in an unlawful status in the country through May 4, 1988, as required for legalization under the LIFE Act.

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.*

The letter from [redacted], president of [redacted] in Richmond Hill, 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 from [redacted] did not specify when the applicant became a member of the temple, where the applicant lived at any point in time between 1981 and 1988, how and when he met the applicant, and whether his information about the applicant was based on [redacted] personal knowledge, the temple's records, or hearsay. Since the letter does not comply with sub-parts (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.

As for the affidavits on the record – dated in 2000, 2001 and 2002 – from individuals who claim to have resided with, worked with, or otherwise known the applicant during the 1980s, they all have minimalist formats with vague and general information. The affiants provide remarkably few details about the applicant's life in the United States during the 1980s, and the nature and extent of their interaction with him over the years. Two of the affiants do not claim to have known the applicant before 1987 and 1988, respectively, and therefore cannot attest to his continuous residence in the United States in previous years. None of the affidavits is accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the 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, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

Based on the foregoing analysis of the evidence, 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.