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

**U.S. Citizenship
and Immigration
Services**

L2

FILE:

MSC 02 243 60584

Office: NEW YORK

Date:

JUL 20 2009

IN RE: Applicant:

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:

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 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.

The applicant filed an appeal, which was summarily dismissed by the Acting Chief, Administrative Appeals Office (AAO), on the ground that no supporting evidence was submitted. The record now reflects that the applicant did attempt to file supporting materials, which are currently before the AAO. Therefore, the AAO will withdraw its summary dismissal for the purpose of deciding the appeal on the merits. Upon review of the supporting materials the AAO determines that the applicant has not established his continuous residence in the United States during the requisite period for legalization under the LIFE Act. Accordingly, the appeal will be dismissed.

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 March 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 31, 2002. As evidence of his residence in the United States during the 1980s, the applicant submitted two affidavits, which included:

- An affidavit by [REDACTED] a resident of Vacaville, California, dated May 21, 2002, stating that he knew the applicant in India before *immigrating to California in 1977, that he talked by phone with the applicant in New York many times between March 1981 and October 1990, and that he knew the applicant resided in Astoria, New York, from March 1981 to August 1985 and in Corona, New York, from August 1985 to October 1990.*
- An affidavit by [REDACTED] a resident of Flushing, New York, dated May 21, 2002, stating that he immigrated to the United States in May 1982 and visited the applicant often at his house in New York until the applicant moved to Florida in October 1990. According to [REDACTED] the applicant worked as a dishwasher in a restaurant from July 1981 to August 1985 and as a sales person from August 1985 to September 1990.

On April 5, 2004, the applicant was interviewed, at which time he submitted:

- An affidavit by [REDACTED] a resident of Hicksville, New York, dated March 30, 2004, stating that he saw the applicant working in a Tandoori restaurant as a dishwasher in 1983, hired him for two days in his own restaurant as a dishwasher in September 1985, but had to let him go when he discovered the applicant had no working papers.

On May 8, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the affidavit evidence lacked sufficient credibility and substantive value 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 submitted three more affidavits, including:

- A second affidavit from [REDACTED] dated May 31, 2007, expanding upon his prior affidavit by stating that he knew the applicant and his wife in India before they came to the United States in March 1981, that he spoke with them often on the phone from India before coming to the United States himself in May 1982, that he knows the applicant worked as a dishwasher in the Indian

restaurant, Tandoor, from July 1981 to August 1985, that he often visited the applicant at the restaurant, and that he remembers the applicant working as a salesman from September 1985 to September 1990. The affiant indicated that he socialized with the applicant on many occasions during the 1980s, and that he knows the applicant resided in Astoria, New York, from March 1981 to August 1985, and in Corona, New York, from August 1985 until October 1990.

An affidavit by [REDACTED] a resident of Dix Hills, New York, dated May 31, 2007, stating that he has known the applicant and his wife since March 1981, that the applicant's wife returned to India in 1982 to bear a child, that the applicant worked at an Indian restaurant, Tandoor, as a dishwasher for about five years, and that he got a sales job in 1985 at which he worked for the next five years. The affiant states that the applicant resided in Astoria, New York, from March 1981 to August 1985, in Corona, New York, from 1985 to 1990, and that he visited the applicant often in those years.

- An affidavit by [REDACTED], the applicant's brother, a resident of Punjab, India, dated June 4, 2007, stating that he accompanied the applicant and his wife to the airport in March 1981 when they departed India for the United States, that he greeted the applicant's wife at the airport in Delhi when she returned to India in April 1982, and that he visited the applicant's wife when she gave birth to a baby daughter in November 1982. According to the affiant, the applicant remained in the United States throughout the 1980s, except for two visits to India in April 1983 and July 1987.

On June 19, 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 from before January 1, 1982 through May 4, 1988.

The applicant filed an appeal on July 18, 2007, indicating on the form that a brief and/or additional evidence would be submitted to the AAO within 30 days. No such materials were received at the AAO. On March 4, 2009, therefore, the Acting Chief, AAO, summarily dismissed the appeal.

On April 3, 2009, the AAO received a letter and documentation from counsel indicating that the applicant had filed an appeal brief and supporting evidence in August 2007. The record now shows that the applicant did file such materials, not at the AAO as directed on the appeal form, but at the New York District Office, where they were stamped received on August 21, 2007. Thus, the appeal brief and additional evidence were not filed at the correct office. But the District Office compounded the error by not forwarding the materials to the AAO in a timely manner. Since the applicant's appeal brief and evidence are now properly in the record, the AAO will withdraw its summary dismissal and consider the appeal on the merits.

On appeal counsel asserts that the director did not give proper weight to the affidavits submitted by the applicant, which are credible and consistent according to counsel, and establish the applicant's continuous residence in the United States during the years 1981 to 1988.

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 March 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 six affidavits from 2002 to 2007, the AAO agrees with the director that they are lacking in evidentiary weight. The affidavit from [REDACTED] in 2002 provides only the barest information about the applicant in New York during the 1980s, and was written by a person who lived that entire decade in California and does not claim to have even visited New York during those years. The affidavit from [REDACTED] in 2004, indicating that he met the applicant in 1983 and hired him for two days in September 1985, states nothing about the applicant before or after those two years. The affidavit in 2007 from the applicant's brother has even less probative value since the brother never lived in the United States and therefore cannot attest from firsthand contact that the applicant maintained continuous residence in the United States between 1981 and 1988. The remaining affidavits – from [REDACTED] and [REDACTED] – are somewhat more substantive, but are still short on details for significant periods of time between 1981 and 1988. Furthermore, none of the affidavits are supplemented by any documentary evidence – such as photographs, letters, and the like – of the applicant's personal relationship with any of the affiants in the United States during the 1980s. Based on the foregoing analysis, the AAO concludes that the affidavits do not represent persuasive evidence of the applicant's continuous residence in the United States during the requisite period (1981-1988) 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.