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

L2

[redacted]

FILE: [redacted] Office: NEW YORK Date: MAR 03 2009

consolidated herein]
MSC 01 307 60400

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. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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.

On appeal, counsel asserts that the director did not give due weight to the affidavit evidence submitted by the applicant.

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."

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 February 1981, filed his application for adjustment of status under the LIFE Act (Form I-485) on August 3, 2001. At that time the record included the following evidence of the applicant's residence in the United States during the 1980s, which had been submitted with a Form I-687 (application for temporary resident status) in April 1990:

A statement by [redacted], dated December 6, 1989, that the applicant worked at his company – '[redacted]' – in New York City from 1982 to 1989.

- An affidavit by [redacted] of Las Vegas, Nevada, dated April 14, 1990, stating that he had known the applicant in the United States since 1981.

An affidavit by [redacted] of Los Angeles, California, dated April 14, 1990, stating that he knows the applicant has resided in the United States continuously since 1982 because he used to be the head priest at a gurdwara in New York where the applicant came for prayer services every Sunday.

An affidavit by [redacted], of unidentified residence, dated April 14, 1990, stating that the applicant departed the United States on September 2, 1987 and returned on October 2, 1987.

On February 28, 2006, the applicant was interviewed for LIFE legalization, at which time he submitted the following additional documentation:

An affidavit by [redacted] of Jamaica, New York, dated February 27, 2006, stating that he had known the applicant since February 1981, that the applicant resided continuously in the United States thereafter, and that the applicant visited his house many times for a variety of social gatherings.

- An affidavit by [redacted] of Brooklyn, New York, dated February 27, 2006, stating that he met the applicant in February 1981 at the Sikh temple in Richmond Hill, that the applicant later worked with him in construction work, that they socialized often, and that he knew the applicant had been continuously resident in the United States since February 1981.

On September 14, 2007, the director issued a Notice of Intent to Deny (NOID), indicating that the affidavit evidence lacked sufficient credibility to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director also noted the applicant's testimony at his interview for LIFE legalization that he had children born in India during 1984 and 1986, which undermined his claim of continuous residence in the United States during the requisite period for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID. On October 30, 2007, therefore, the director issued a Notice of Decision denying the application for the reasons stated in the NOID.

On appeal counsel asserts that the director failed to fairly consider the totality of the evidence and did not give due weight to the affidavits submitted by the applicant.

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 in the United States during any of the requisite period for LIFE legalization. For someone claiming to have lived in the United States since February 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 various affidavits and statements from individuals who claim to have known the applicant during the 1980s, they all have minimalist or fill-in-the-blank formats that provide few details about the applicant's life in the United States and his interaction with the affiants during the years 1981 to 1988. For the amount of time they claim to have known him, the affiants offer remarkably little information about the applicant. For example, only one of the affiants provided specific details about how, when, and where he met the applicant in the United States, and none of the affiants, who themselves reside in various places around the United States, indicated where the applicant lived during the 1980s. Two of the authors provided rudimentary information about the applicant's employment, but so skimpy in detail – one affiant identifying the company without describing either the nature of the business or the applicant's job duties, and another saying he worked with the applicant in construction without identifying the company or the time frame – as to be virtually devoid of probative value. Lastly, there is no supporting documentation in the record – such as photographs, letters, and the like – of the personal relationship between the applicant and any of the affiants during the 1980s. Considering the paucity of information in the affidavits and statements, these documents do not represent persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

Furthermore, the applicant has not addressed the issue raised by the director in the NOID about the birth of his children in India in the years 1984 and 1986. This information was not divulged by the applicant on his Forms I-687 and I-485 filed in 1990 and 2001, though it was divulged on another Form I-485 he filed in 1999. The applicant has provided no details about his own whereabouts, and the duration of any absences from the United States, from the times his children were conceived through the times of their birth in 1984 and 1986. Any single absence from the United States longer than 45 days, or aggregate absences totaling more than 180 days, would exceed the maximum prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1) and interrupt the applicant's continuous residence in the United States.

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.