

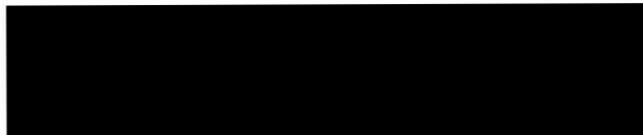
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FILE:



Offices: NEW YORK CITY

Date: **MAR 18 2009**

— consolidated herein]

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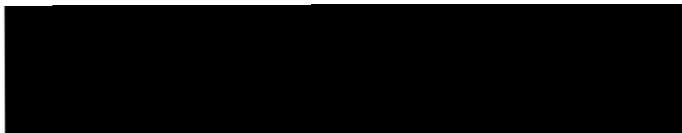
IN RE: Applicant:



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. 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 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 counsel asserts that the director failed to properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant resided in the United States continuously in an unlawful status from before January 1, 1982 through May 4, 1988.

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 lived in the United States since September 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 2, 2002.

In a Notice of Intent to Deny (NOID) dated February 1, 2008, the director indicated that the evidence of record was insufficient to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status through May 4, 1988. The director noted substantive deficiencies and contradictions in the applicant's testimony at his LIFE legalization interview on April 26, 2004 and documentation in the file with regard to the date the applicant first entered the United States and his years of continuous residence in the country. The applicant was granted 30 days to submit additional evidence to justify or rebut the discrepancies.

In response, the applicant provided some explanations for the evidentiary discrepancies cited in the NOID and submitted some additional documentation. On March 3, 2008, the director issued a Notice of Decision, denying the application, indicating that the rebuttal information and additional evidence were insufficient to overcome the grounds for denial.

The applicant filed a timely appeal, asserting that the director failed to properly evaluate the evidence in the record. Specifically, counsel asserts that the director did not verify the additional affidavits submitted by the applicant with his response to the NOID, and that the director did not give due weight to the rebuttal information submitted by the applicant in response to the NOID before issuing the Notice of Decision denying the application. Counsel submits no additional evidence with the appeal.

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 that the applicant submits 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 through May 4, 1988, consists of the following:

- A letter from [REDACTED] in Richmond Hill, New York, dated April 20, 2004, stating that the applicant “is a member of our congregation. Since a long time, he comes to the Gurudwara (Sikh Temple) regularly.”
- Letters and affidavits – dated in 2004 and 2008 – from two acquaintances who claim to have known the applicant in the United States 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 affidavit and letter in this decision.

The AAO notes that although the applicant claims that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988, other documentation in the record indicates otherwise. For example, a copy of the applicant’s expired Indian passport in the file – passport [REDACTED] shows that the passport was issued in Chandigarh, on December 12, 1986. Since the applicant did not indicate any absence from the United States in 1986, the passport issue date is a strong indication that the applicant was in India at the time the passport was issued.

The record also reflects two Forms I-130 (petition for alien relative) filed on behalf of the applicant on July 17, 1995 and January 3, 1998, a Form I-485 and an accompanying Form G-325A (Biographic Information) filed with the Form I-485 on January 13, 1998. On the Form I-130 filed in 1995, the applicant stated that he entered the United States on November 11, 1990. And on the accompanying Form G-325A dated June 19, 1995, the applicant listed his last address outside the United States for more than one year as Talwandi, Punjab, India from November 57 (month and year of birth to November 1990). The applicant listed his employment as Self-employed, Punjab, India, farmer, from July 1975 to October 1990. Also on the Form G-325A, dated January 7, 1998, which the applicant filed with the 1998 Form I-485, the applicant listed his address outside the United States of more than one year as Talwandi, Punjab, India, from November 1957 to November 1990. The addresses and employment history listed on the two Forms G-325A are contrary to that listed by the applicant on the Form I-687 (application for status as a temporary resident) he filed in 1992.

On the Form I-687, the applicant listed the following as his residential addresses and employers in the 1980s:

Residences:

- [REDACTED] from September 1981 to March 1991.

Employers:

- Self-employed as a janitor from September 1981 to February 1992.

The contradictory information provided by the applicant regarding his initial date of entry into the United States and his continuous residence in the country casts considerable doubt on his claim that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. The director in her NOID notified the applicant of the contradictory information and documentation in the record and offered him an opportunity to reconcile or rebut the contradictions 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.*

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

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 mostly of a series of letters and affidavits – from individuals who claim to have known the applicant in the United States during the 1980s, is suspect and non-substantive. For example, the letters and subsequent affidavits from [REDACTED] and [REDACTED] did not claim to have known the applicant in the United States before January 1, 1982. Additionally, their affidavits of 2008 are contradictory to their letter of 2004. While in the 2004 letters, [REDACTED] and [REDACTED] claim to have known the applicant since 1982 and 1983 respectively, in their 2008 affidavits, they both claim to have known the applicant since 1985. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See matter of Ho, id.* Thus, it must be concluded that the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status during the period for legalization under the LIFE Act.

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.