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

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FILE: [redacted] Office: FRESNO Date: MAY 06 2009

MSC 03 213 60882

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

The director denied the application on the grounds 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 meets the continuous residence requirement for legalization under the LIFE Act.

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 entered and lived with his parents in the United States since November 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 1, 2003. It is noted that the applicant was one year old in 1981, at the time he claims to have entered the United States with his parents.

The applicant was interviewed on January 21, 2004, with regards to his application for LIFE Legalization. On the same date, the director issued a Form I-72, Request for Evidence (RFE) of his continuous residence and continuous physical presence in the United States from January 1, 1982 through May 4, 1988, the originals of all documents previously submitted, a copy of his birth certificate and a properly completed Form G-325A. The applicant was granted 87 days to submit the requested evidence and that if he fails to respond, the application will be decided based on the evidence in the record.

The applicant did not respond to the RFE and on September 9, 2004, the director issued a Notice of Decision denying the application on the ground that the applicant has failed to establish 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.

The applicant filed a timely appeal and submitted additional documents as well as copies of documents previously submitted. The additional documents are outside the requisite period for LIFE legalization and therefore are of no probative value and were not considered in this proceeding.

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 an unlawful status through May 4, 1988, consists primarily of photocopies of affidavits from individuals who claim to have known the applicant and his family resided in the United States during the 1980s. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The documentation submitted by the applicant is not probative or credible.

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, such as school or hospital records which is reasonable to expect from a child of one year in 1981.

The record reflects that the applicant, who was born on November 6, 1980, and who claims that he has been residing in the United States since 1981, would have been only one year old when he entered the country. However, the applicant does not submit any school or medical records nor does he provide an explanation as to why he is unable to provide his school or hospital records during the period from 1982 to 1988. The earliest documentation submitted by the applicant of his presence in the United States is a transcript of courses taken at Caruthers High School from September 1996. The record indicates that the applicant graduated from the High School on June 2, 2000.

The record also reflects that the applicant was listed as a dependent on his father's Form I-589 (Request for Asylum), which was filed on August 15, 1994. On the form, it was indicated that the applicant arrived in the United States on June 7, 1987 near Blaine, Washington. And on a Form G-325A, dated September 25, 2004, the applicant listed his address outside the United States of more than one year as [redacted], Canada, from May 1987 to June 1987. Because of the lack of objective evidence indicating when the applicant entered the United States, as well as the absence of any primary evidence such as, school records or hospital records, placing the applicant in the United States during the statutory period (January

1, 1982 to May 4, 1988), it is likely that the June 7, 1987 entry dated stated on the Form I-589 and Form G-325A, may have been the first time the applicant entered the United States.

The photocopied affidavits in the record – dated in 1990, 2002, and 2003 – are from five individuals who claim to have resided with the applicant's mother, or otherwise known the applicant and his family during the 1980s. The affidavits have minimalist formats with very little information about the applicant and his family's life in the United States during the 1980s, such as which school he attended, and the nature and extent of their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. The affidavit from [redacted] only stated that he met the applicant and his family at a Sikh temple in Stockton, California, on December 20, 1981, but did not provide any other information about the applicant's continuous residence in the United States and the nature and extent of his interaction with the applicant and his family over the years. The affidavit from [redacted] stated that he met the applicant and his family in Los Angeles on September 15, 1981. This affidavits is clearly false because the applicant claims that he first entered the United States in November 1981. It is impossible that the affiant could have met the applicant and his family in Los Angeles two months before they arrived in the United States. The affidavit from [redacted], a citizen and resident of Canada, provided information that the applicant and his family visited him in Canada from May to June 1987, and nothing about the applicant's residence in the United States. The two affidavits of residence from [redacted] and [redacted], stating that the applicant's mother resided with them from March 1981 to January 1984, and from January 1984 to September 1989, is suspect. The affidavits did not indicate the names of the people that resided with the applicant's mother. In addition, the affidavit from [redacted] indicated the period of residence was from March 1981, but the applicant stated that he entered the United States with his family in November 1981 – eight months later. In view of the substantive deficiencies and possible fraud, 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.

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, 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.