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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

L2

FILE: [redacted] Office: FRESNO Date: MAY 06 2009
MSC 02 071 61337

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 Fresno, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. 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, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6. 1986 through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient credible evidence to establish that he meets the continuous residence and continuous physical presence requirements 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 lived in the United States since January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on December 10, 2001.

In a Notice of Intent to Deny (NOID), dated January 22, 2004, the director indicated that the applicant had not submitted sufficient credible evidence to establish his entry into the United States before January 1, 1982, his 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 to May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant timely responded and submitted additional documentation. On August 30, 2004, the director issued a Notice of Decision denying the application on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal, the applicant asserts that he has submitted sufficient credible evidence to establish that he meets the continuous residence and continuous physical presence requirements for legalization under the LIFE Act. The applicant submitted the originals of two letters previously submitted in the record.

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, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he continuously resided in the United States and was continuously physically present in the country during the periods required for LIFE legalization under the LIFE Act, consists of the following:

- A letter of employment from [redacted], assistant secretary for Indian Restaurant in Fresno, California, dated July 23, 1990, stating that the applicant was employed from March 1981 to November 1985, as a waiter.
  A letter from [redacted], supervisor at M & E Market in Fresno, California, dated July 20, 1990, stating that the applicant was employed from January 1986 to August 1989 as a meat cutter.
- A series of affidavits – dated in 1990, 2001, and 2003 – from individuals who claim to have known the applicant in the United States during the 1980s.
  A letter dated January 3, 1986, addressed to the applicant from the president of Fremont Hindu Temple in Fremont, California, to thank the applicant for the voluntary work he did at Fremont Temple.
  A letter dated December 7, 1985, addressed to the applicant from [redacted] manager at Kabila Indian Cuisine in Union City, California, informing him to contact the restaurant to set up an interview for the position of waiter at the restaurant.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Here the submitted evidence is not probative and 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.

The letters of employment from Indian Restaurant and M & E Market, both in Fresno, California, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the letters did not indicate the applicant's address during the periods of employment, did not indicate whether the information about the applicant was taken from company records, and did not indicate whether such records are available for review. Nor were the letters supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. The letters of employment have limited probative value. They are not persuasive evidence that the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the country from November 6, 1986 to May 4, 1988.

The letters from Kabila Indian Cuisine and Fremont Hindu Temple do not appear to be genuine. The letter from Kabila Indian Cuisine, dated December 7, 1985, was addressed to the applicant at [redacted], Fresno, California, and the letter from Fremont Hindu Temple, dated January 3, 1986, was addressed to the applicant at [redacted], Hayward, California. However, on the Form I-687 (application for status as a temporary resident) dated July 24, 1990, the applicant listed his address during the same period as [redacted], Caruthers, California. The applicant did not claim the addresses in the letters as any of his residential addresses in the United States during the 1980s. Thus, the credibility of the letters as evidence of the applicant's residence and physical presence in the United States during the requisite periods is in serious doubt. 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*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As for the affidavits in the record, they have minimalist or fill-in-the-blank formats, with very few details about the applicant's life in the United States such as where he resided or worked, and the nature and extent of their interactions with the applicant during the 1980s. 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. Affiants [redacted], who identified himself as the applicant's brother-in-law, and [redacted], who identified the applicant as his "cousin brother," both claimed in similarly worded affidavits that they met the applicant at Selma, California in the month of November 1980. These two do not appear to be genuine because while they claim to have met the applicant in California in November 1980, the applicant stated that he did not enter the United States until January 1981. In view of these substantive shortcomings, and possible fraud, the AAO finds that the affidavits have little or no 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 continuous physical presence in the United States from November 6, 1986 to 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, and was continuously physically present in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i)(1)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.