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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEWARK Date: MAY 22 2009
[– consolidated herein]
MSC 01 335 61145

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 Newark, New Jersey. 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 the applicant asserts that the director did not properly evaluate the documentation he submitted in support of his application. In the applicant's view the documentation in the record is sufficient 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 lived in the United States since November 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 31, 2001.

In a Notice of Intent to Deny (NOID) dated March 23, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and his continuous unlawful residence in the United States during the requisite period through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant timely responded to the NOID and submitted additional documents. On April 21, 2007, the director issued a decision denying the application based 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 the director did not properly evaluate the affidavits he submitted in support of his application. In the applicant's view the documentation of record is

sufficient to establish that he meets the continuous residence requirement for legalization under the LIFE Act. The applicant submits no additional evidence on 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 record reflects that the applicant submitted contradictory information and documents 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. The applicant submitted a photocopy of a Seaman's Landing Permit as evidence that he entered the United States on November 28, 1981 as well as a copy of an International Certificates of Vaccination showing that he was vaccinated for small pox at the Marine Medical Unit in New Orleans, Louisiana on December 2, 1981. The applicant claimed that following his entry in November 1981, he continuously resided in the United States in an unlawful status through May 4, 1988, except for two short trips outside the United States in October 1982 and from November to December 1988 – as indicated on the Form I-687 (application for status as a temporary resident) he filed in 1990. The applicant did not indicate any other absences from the United States during the 1980s.

Contrary to the applicant's assertion, there is ample evidence in the record which shows that the applicant did not continuously reside in the United States from before January 1, 1982 through May 4, 1988. The file contains a Form I-589 (application for asylum) which the applicant filed in 1989. On that form, the applicant indicated that he entered the United States on December 3, 1988, as a C-1, with authorization to remain in the United States until December 10, 1988. The applicant indicated that he traveled on passport # [redacted] which was issued to him in India on September 25, 1987. The applicant stated that he applied for and was granted a visa at the United States Consulate in New Delhi, India, on December 2, 1988, which he used to travel to the United States on December 3, 1988. United States Citizenship and Immigration Services (USCIS) records show that the applicant was admitted into the United States on December 3, 1988, as a C-1 through New York City. This entry is corroborated by a copy of a Form I-94 (arrival and departure record) in the file. There is no evidence that the applicant departed the United States following his entry in December 1988.

On the Form G-325A (Biographic Information) dated June 6, 1989, which the applicant submitted with the Form I-589, the applicant indicated his last address outside the United States

of more than one year as [redacted] India, from June 1982 to December 1988. Thus the residential information on the Form G-325A is contrary to the residential information the applicant provided on the Form I-687, and call into question the veracity of the applicant's claim that he has continuously resided in the United States from before January 1, 1982 through May 4, 1988, and undermine the credibility of the documents submitted by the applicant attesting to his continuous residence in the United States during the requisite period.

The record further reflects that the applicant submitted a Sworn Statement at Newark International Airport on March 9, 2007. The applicant stated the following:

Q: When was the first time you came to the United States?
A: A came in 1979 and many times as a crewman but only for working on the ship and I returned to India.
Q: What were the dates you continually were in the United States?
A: From 1988 until now.
Q: Did you ever have a visa issued by a consulate of embassy?
A: Yes, just one time in 1988.
Q: Do you remember what type of visa that was?
A: That was a crew/seaman visa.
Q: What did you do after you received that visa?
A: **I flew from New Delhi to JFK Airport in New York. I showed the visa to the** immigration officer and then took a taxi to New Jersey to the home of a close family friend.

Based on the applicant's own statement completed under oath, he did not enter the United States to reside until December 1988. Although he had made other entries in the past starting from 1979, he did not reside in the United States until 1988. Therefore the applicant is statutorily ineligible for legalization under the LIFE Act.

The contradictory information provided by the applicant regarding his initial entry into the United States and his continuous residence in the country casts considerable doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988 and on the credibility of the documents submitted in support of application. 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.*

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 of

photocopied receipts and affidavits from individuals who claim to have known the applicant resided in the United States from 1981 – is suspect and not credible. Thus, it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

Accordingly, 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, 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.