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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] Offices: CHICAGO Date: NOV 1 6 2009

MSC 02 246 65975

[redacted]

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.

for Perry J. Rhew
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 Chicago, Illinois. 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 did not 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 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).

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 May 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 3, 2002.

In a Notice of Intent to Deny (NOID) dated August 24, 2007, the director indicated that the applicant has failed to submit sufficient credible evidence to establish his claim. The director noted that the applicant is not admissible because he was ordered excluded and deported on February 8, 1999 by an Immigration Judge on the ground that he violated section 212(a)(6)(E)(i) of the Immigration and Nationality Act(INA), and that he attempted to enter the United States on August 1, 1995 by falsely claiming to be a resident of the United States and presented a fraudulent Form I-155(Lawful Permanent Resident Card) in violation of section 212(a)(6)(C)(i) of the INA.[1] The applicant was granted 30 days to submit additional evidence.

The applicant failed to submit additional documentation to address the deficiencies cited in the NOID. On September 26, 2007, the director issued a decision denying the application on the ground that the applicant failed to submit sufficient credible evidence to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988.

On appeal counsel asserts that the director did not 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 meets the continuous residence requirement for legalization under the LIFE Act. Counsel submits photocopies of documents previously submitted in the record. [2]

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[1] The record reflects that the applicant attempted to smuggle an alien into the United States without a visa on June 27, 1995. The applicant was placed in removal proceedings. On February 8, 1999, the Immigration Judge (IJ) found the applicant guilty of violation of section 212(a)(6)(E)(i) of the Immigration and Nationality Act (INA) and ordered him deported. The applicant appealed the decision to the Board of Immigration Appeals (BIA). On April 18, 2003, the BIA affirmed the decision of the IJ to deport the applicant. The applicant filed a Motion to Reconsider (MTR). On February 24, 2004, the BIA denied the MTR and affirmed its decision on April 18, 2003. While his appeal was pending before the BIA, the applicant filed a Form I-485 LIFE application. These grounds of inadmissibility can be waived under 8 C.F.R. § 245a.18.

[2] The record reflects that counsel timely filed an appeal to the director's decision to deny the applicant's LIFE application on a Form I-694 and erroneously checked Temporary Residence instead of Permanent Residence. The AAO will adjudicate the appeal as if properly filed on a Form I-290B.

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.

Contrary to the applicant's claim that he entered the United States in May 1981 and resided continuously in the country through May 4, 1988, other documents in the record call into serious question the veracity of the applicant's claim.

On a prior Form I-687 the applicant filed on March 1, 1990 and the accompanying affidavit he completed under penalty of perjury on February 28, 1990, the applicant indicated that he entered the United States in May 1981 and resided continuously in the country except for one brief trip outside the United States to India from May to June 1987. The applicant indicates the following as his addresses and employment in the United States from initial entry through the requisite period:

Addresses:

- [redacted] from May 1981 to October 1986; and
- [redacted] from November 1986 to June 1989.

Employment:

- [redacted], from May 1981 to December 1982;
- Distributing Flyers in Downtown Chicago, from January 1983 to April 1986; and
- Parking Lot East Dalaware[sic], attendant, from May 1986 to June 1989.

On the Form I-687 the applicant filed on June 23, 2004, he indicated the following as his addresses and employment in the United States from initial entry through the requisite period:

Addresses:

- [redacted] from May 1981 to August 1983;
- [redacted], from September 1983 to July 1984;
- [redacted], from July 1984 to February 1987; and
- [redacted], from February 1987 to March 1990.

Employment:

- [redacted] finisher, from December 1981 to August 1983;
- [redacted], attendant; from September 1983 to March 1985; and
- [redacted], from March 1985 to June 1989.

The record includes a letter signed by [redacted] who identified himself as the owner of [redacted] in Chicago, Illinois, dated November 2, 2005, attesting that the applicant has "worked for our store during the year of 1984." Also in the record is a notarized letter from [redacted] dated May 13, 2002, stating that the applicant shared an apartment located at [redacted], with him for some months when the applicant first came to the United States in 1981.

These letters contradicted the applicant's statements on the two Form I-687s regarding his residence and employment in the United States during the 1980s. In fact, the applicant did not claim [redacted] as one of his employers in the United States, and did not indicate [redacted] as one of his addresses in the United States. Therefore, it is abundantly clear that the applicant has provided conflicting statements and documents in support of his application. The applicant has not provided any objective evidence to clarify or justify the discrepancies. The conflicting statements and documents discussed above cast 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 the requisite period. The contradictions also call into question the credibility and reliability of the two letters listed above as well as other documents submitted by the applicant that attest to his continuous residence in the United States from before January 1, 1982 through the requisite period.

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 discussed above, the applicant has provided conflicting statements and documentation in support of his application. The applicant has not provided any objective evidence to explain or reconcile the contradictions. Therefore, the remaining documentation in the record consisting of – letters and affidavits from individuals who claim to have known the applicant in the United States during the 1980s, a photocopy of a portion of the vehicle registration for a 1983 Honda, as well as a copy of a merchandise receipt from [redacted] dated May 1, 1985, with handwritten notation of the applicant's name and an incorrect address – is suspect and not credible.

For example, the record includes: (1) a letter from [redacted] dated November 17, 2005, stating that he has known the applicant since 1981, that he was the applicant's primary physician from 1981 to 1989, and that "our records indicate that [the applicant] was treated during the years of 1984 and 1988; and (2) an undated letter from [redacted] of Devon Community Medical Center in Chicago, Illinois, stating that the applicant was under his care and that the applicant visited the outpatient clinic at Columbus Hospital in Chicago, between May 1986 to June 1987 for various ailments like lower back ache and upper respiratory infections.

The letter from [redacted] did not identify the applicant's address during the period the applicant was under his care and the address identified by [redacted] as the applicant's address during the period May 1986 to June 1987, is inconsistent with the address claimed by the applicant for the same time period. The letters did not specify the precise dates the applicant received treatments despite the fact that [redacted] claimed that his information about the applicant was taken from "our records," nor did he identify the records he was referring to. The letters are not accompanied by medical records specifying dates of visits and the nature of the visits. 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.* In view of the substantive deficiencies and contradictions, the AAO finds that the letters from and [redacted] have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

The affidavit by [redacted] who claims to be the president of [redacted] in Chicago, Illinois, dated May 13, 2002, attests that he delivered a sofa/sleeper to the applicant at the applicant's apartment located at [redacted] back in 1983. This affidavit is vague as to the applicant's address and the specific date of delivery. [redacted] did not supplement this affidavit with a copy of the sales receipt which would have provided specific information such as the date the sofa/sleeper was sold to the applicant, the applicant's complete address and the specific date of delivery. Thus, the affidavit has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

The photocopy of a portion of the vehicle registration for a 1983 Honda Hatchback which the applicant submitted as evidence of his residence in the United States does not bear the name and address of the applicant or the date of issuance. The document cannot be attributed to the applicant. Therefore, it has little probative value as evidence of the applicant's residence in the United States during the requisite period.

As for the letters and affidavits in the record from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s, they have minimalist format with very few details about the applicant's life in the United States, and the nature and extent of their interactions with the applicant over the years. [redacted] submitted two letters dated July 7, 2005 and November 2, 2005 regarding the applicant's

employment at [redacted] in Chicago, Illinois, that are contradictory to each other and contradictory to the employment information provided by the applicant on the two Form I-687s in the file. The letters are not accompanied by pay stubs, earnings statements or tax records to show that the applicant was employed by the company as indicated. Also, the letter submitted by [redacted] regarding the applicant's address in 1981 is contrary to the address provided by the applicant for the same period. 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.*

Additionally, the authors do not seem to have direct personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period. The authors did not provide documentation to establish their own identities and their residence in the United States during the 1980s. The letters and affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the authors' personal relationships with the applicant in the United States during the 1980s. In view of these substantive deficiencies, and the applicant's overall lack of credibility, the AAO finds that the letters and 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 the requisite period. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

Therefore, based on the foregoing, 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.