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

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: SEP 22 2009

MSC 02 250 64869

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 forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and 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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he found that the evidence in the record failed to demonstrate that it is more likely than not that the applicant resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

On appeal, the applicant indicated that the evidence does demonstrate that she resided continuously in the United States throughout the statutory period, and that she is otherwise qualified to adjust to lawful permanent resident status under the LIFE Act.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.[1]

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) and 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

> (1) 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.

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 amenability to verification. 8 C.F.R. § 245a.12(e).

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[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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 application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

Documentary evidence may be in the format prescribed by U.S. Citizenship and Immigration Services (USCIS) regulations. *See id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. In evaluating the evidence, *Matter of E-M-* also states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. 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 petitioner or 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

At issue in this proceeding is whether the applicant is able to establish that she resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988. Here, the applicant has not met that burden.

On or near July 24, 1990, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On June 7, 2002, she filed Form I-485, Application to Register Permanent Residence or Adjust Status, under section 1104 of the LIFE Act.

The record includes statements and affidavits relating to the applicant's claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, and that she is otherwise eligible to adjust, such as:

1) The Form I-687 submitted during July 1990 which the applicant signed under penalty of perjury and on which she specified at item 35 that she was absent from the United States only once during the statutory period. She stated that this absence was from July 18, 1987 through August 16, 1987, and that during this absence she traveled to Canada to visit relatives. She also stated on this form at item 32 that the date of her only child [redacted] birth in India is "unknown".

2) The Form I-687 submitted on May 25, 2005 on which the applicant stated at item 32 that she was absent from the United States only once during the requisite period, and that this absence occurred during July/August 1987 when she traveled to Canada to visit relatives.

3) The September 23, 2003 affidavit of [redacted] in which [redacted] attested that the applicant resided with him from 1983 through 1990 except for her short visit to Canada in 1987.

4) The applicant's December 6, 1999 declaration in which she stated that during July 1987 she traveled briefly to Canada to meet her sister [redacted] to have her travel with her to India. The applicant indicated that the purpose of the trip was that she might give birth to her daughter [redacted] with her mother present, as it is important in her culture that a mother be present when her daughter gives birth. The applicant indicated that her daughter was born on August 8, 1987 and that the applicant re-entered the United States without inspection after about one month.

5) The director's statement in the notice of decision that puts the applicant on notice that in her husband's A-file is her statement which indicates that she married in India on January 22, 1985.

6) Notes from the July 10, 2003 interview relating to the Form I-687 which the applicant filed on May 25, 2005 which indicate that the applicant testified that she married her husband on January 22, 1980 in India, that the two divorced in November 1994 and that they re-married in May 2002. The applicant also testified that she began residing in the United States in October 1981 and never departed again until July 1987.

7) The September 23, 2003 affidavit of [redacted] in which [redacted] attested that the applicant was already living at [redacted] when he arrived in California.

8) The August 15, 1990 affidavit of [redacted] in which [redacted] indicated that the applicant, his cousin, came to him in 1981 and began living at his home at [redacted]

9) The Form I-687 which the applicant filed on May 25, 2005 on which she stated at item 31 where she was to list all affiliations and associations with organizations, churches, etc. in order to help establish that she resided in the United States during the requisite period that she was part of the Stockton, California Sikh Temple: [redacted] from December 1982 through February 1990.

10) [redacted] letter on Sri Guru Nanak Sikh Temple, 2269 Bogue Road, Yuba City, California letterhead stationery which indicates that the applicant regularly attended religious events at this temple from December 1981 through March 1990. This office notes that according to maps available at www.mapquest.com (accessed September 10, 2009), this temple is approximately: four hours and forty minutes drive from the address which the applicant stated on both Forms I-687 in the record was her home address in Delano, California from 1981 through 1982; three hours and twenty minutes drive from her 1982-1983 home address in Watsonville, California as listed on the Forms I-687; and three hours and thirty minutes drive from her 1983-1990 home in Salinas, California as listed on the Forms I-687.

11) The July 1990 Form I-687 on which the applicant left blank item 34 where she was to "assist in establishing the required residence" by listing all affiliations or associations with organizations, churches, etc.

12) The September 23, 2003 affidavit of [redacted] on which he attested that the applicant lived continuously in California from October 1981 through the date that he signed that document.

13) The 2005 Form I-687 on which the applicant stated that she lived in Salt Lake City, Utah during one month of 1994.

14) The applicant's Form I-512, Authorization for Parole of an Alien into the United States, which the applicant submitted during September 1994 and which she used to enter the United States on November 23, 1995. The applicant lists her home address as [redacted] Lake City, Utah on this form.

The record does not include contemporaneous evidence from the statutory period. The record does contain some contemporaneous evidence which places the applicant in the United States after the statutory period. The record also contains additional statements and affidavits related to the applicant's claim that she resided in the United States during the statutory period.

The director issued a notice of decision in which he indicated that the applicant had submitted affidavits and made statements that are inconsistent with each other, and thus are not probative. For example, the director indicated that the applicant stated on the two Forms I-687 in the record that during her one absence from the United States during the requisite period she traveled to Canada for the purpose of visiting relatives. Also, in his September 23, 2003 affidavit, [redacted] attested that the applicant resided in the United States during the requisite period except for a brief visit to Canada in 1987. However, the applicant has made statements in this proceeding which indicate that she left the United States in 1987, not to visit relatives in Canada, but in order to give birth to her daughter in India on August 8, 1987. In this proceeding the applicant also made claims that she married in India during 1980, but the applicant's statement in her husband's A-file indicates that the two married in India on January 22, 1985. The director found that the applicant had not provided consistent evidence sufficient to establish that she resided continuously in the United States throughout the requisite period, and he denied the application.

On appeal, the applicant suggested through counsel that there is no inconsistency between statements which indicate that in July/August 1987 the applicant traveled to Canada and those which indicate that she traveled first to Canada to meet her sister and then to India. Counsel indicated that the latter statements merely provide more information regarding the July/August 1987 absence.

This suggestion is not persuasive. On the Forms I-687 in the record the applicant specified that she traveled to Canada for the purpose of visiting relatives. In her December 6, 1999 Declaration she specified that she met her sister in Canada in order to travel to India to give birth in keeping with her culture's tradition of daughters giving birth with their mothers present. The AAO notes as well that the Form for Determination of Class Membership in *CSS v. Meese* in the record states that the applicant departed the United States on July 18, 1987 to visit relatives, and that form specifies at item 9(b) where the applicant was to list all "countries visited" during that absence that she visited only one country: Canada.

On appeal, the applicant also indicated through counsel that she never signed a statement that she married in India during 1985. The credibility of this statement is undermined by the rebuttal which the applicant presented through previous counsel in response to the director's notice of intent to deny the 2005 Form I-687. In the rebuttal, the applicant indicated that the marriage date in her statement

should have been written January 2, 1980, but due to an honest clerical error, which she failed to notice when going over that document, it was written January 22, 1985 on her statement.

On appeal, the applicant also suggested through counsel that the director should find the affidavits in the record credible because the affidavits are subject to verification and the director has not yet attempted to verify the statements made on those documents. This is not correct. The director correctly determined that the affidavits in the record are not probative because they are inconsistent with each other and with the applicant's own statements made in this proceeding. *See Matter of E-M-*, 20 I&N Dec. 77 at 80 (which states that in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent and credible as well as whether it is consistent with the other evidence in the record.)

Finally, counsel suggested on appeal that the letter from the Sri Guru Nanak Sikh Temple in the record overcomes any inconsistencies in the evidence in the record, and establishes that the applicant resided continuously in the United States throughout the relevant period. This letter is not sufficient to overcome the discrepancies in the record. Further, the letter's credibility is undermined in various ways in that, for example, the applicant did not list any association with this temple on the Forms I-687 in the record, where requested to do so. Also on one of the Forms I-687 which she submitted, she stated that she was a member at a different Sikh temple, located in a different part of California, during the membership period listed on the Sri Guru Nanak Sikh Temple letter.

The AAO finds that the discrepancies set forth by the director cast serious doubt on all the evidence in the record, including the applicant's claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. Such inconsistencies may only be overcome through independent, objective evidence of the applicant's claim that she resided continuously in the United States during the statutory period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

This office finds that the various statements and affidavits in the record which were submitted to substantiate the applicant's claim of continuous residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the deficiencies in the record relating to the applicant's claim that she maintained continuous residence in the United States from a date prior to January 1, 1982 and throughout the statutory period, and that these documents are not probative in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, she is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act. The appeal is dismissed on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.