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FILE: [REDACTED]
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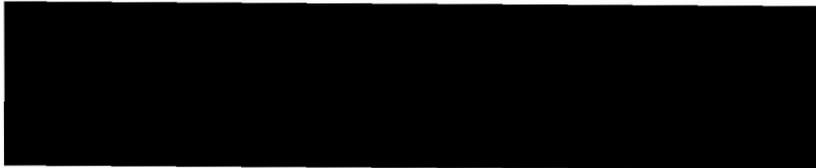
Office: CINCINATTI

APR 25 2008

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Cincinnati, Ohio, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to provide sufficient documentation to establish his entry into the United States before January 1, 1982; his continuous residence from January 1, 1982, through May 4, 1988; or, his continuous physical presence between November 6, 1986, until May 4, 1988.

On appeal, counsel for the applicant asserts that the director did not give sufficient weight to the multiple affidavits submitted on the applicant's behalf and that the director did not fully address why the affidavits do have sufficient detail to be credible. Counsel does not submit a brief or additional documentation.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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).

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 or 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 record reflects that on July 20, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On October 22, 2004, the applicant appeared for an interview based on his application.

On February 15, 2005, the director issued a Notice of Intent to Deny (NOID), stating that the applicant had not provided sufficient documentation to establish his entry into the United States before January 1, 1982; his continuous residence through May 4, 1988; or, his continuous physical presence from November 6, 1986, through May 4, 1988. The director informed the applicant that he had 30 days from the receipt of the NOID to submit evidence to overcome the director’s intent to deny his application.

On December 29, 2005, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel for the applicant asserts that the director did not give sufficient weight to the multiple affidavits submitted on the applicant’s behalf and that the director did not fully address why the affidavits do have sufficient detail to be credible. Counsel does not submit a brief or additional documentation.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States before January 1, 1982; his continuous residence from January 1, 1982, through May 4, 1988; and, his continuous physical presence in the United States during the requisite period.

The applicant submitted various documents as well as several affidavits as evidence to support his Form I-485 application. Some of the evidence submitted is either undated or indicates that the applicant resided in the United States after his last entry without inspection, at or near Detroit

at the U.S./Canada border, on or about October 15, 1987, and is not probative of residence before that date. The following evidence relates to the requisite period:

Affidavits

- The applicant submitted two affidavits from [REDACTED], the applicant's friend. The affidavit dated February 6, 2002, was simply a fill-in-the-blank affidavit. The affidavit dated February 3, 2005, was a fill-in-the-blank affidavit, accompanied by a brief, handwritten note. Mr. [REDACTED] stated that he has known the applicant and his wife since 1984. He stated that they had dinner together once a month and celebrated the religious ceremony of the "Gura" priest together. He stated that he had personal knowledge that the applicant resided in Ohio from July 1984 to February 1992, and in Tacoma, Washington, from March 1992 to September 1992.
- The applicant submitted three fill-in-the-blank affidavits from [REDACTED], [REDACTED], and [REDACTED]. All of the affiants stated that they had personal knowledge that the applicant resided in Richmond Heights, Ohio from 1981, to 1992, and in Tacoma, Washington from March 1992, to September 1992. In the blank where they stated how they are able to determine the beginning of their acquaintance with the applicant in the United States, all of the affiants simply stated that they have known the applicant during the above stated period by visiting one another and keeping in contact.
- The applicant submitted a fill-in-the-blank affidavit from [REDACTED] who stated that he had personal knowledge that the applicant resided in Richmond Heights, Ohio, from November 1981 to 1992. He stated that the applicant came to visit him because he had come to the United States for the first time because they were close friends.
- The applicant submitted a fill-in-the-blank affidavit from [REDACTED] who stated that he had personal knowledge that the applicant resided in Chicago, Illinois from September 1981, to December 1981. He stated that he met the applicant on the above mentioned date when the applicant and his wife came to the United States to attend the wedding of a mutual friend.
- The record of proceeding also contains a fill-in-the-blank affidavit from [REDACTED] accompanied by a handwritten note. Mr. [REDACTED] stated that he and the applicant are old friends from back in India. He states that he contacted the applicant in 1981 and that they have been in touch since then. He stated that he invited the applicant and his wife to the birthday celebration of the affiant's daughter in April 1987.

These affidavits can be given little evidentiary weight as they are not sufficiently detailed. The affidavits from [REDACTED] only cover the time period from 1984 to 1992. The affidavits from [REDACTED] and [REDACTED] provide no details about the regularity of their contact with the applicant. None of the affiants indicated how they dated their acquaintance with

the applicant, how they met the applicant, or, how frequently they saw the applicant. The affidavit from [REDACTED] only suggests that the applicant was physically present in the United States for about three months in 1981 to attend a wedding. The affidavit from [REDACTED] fails to provide any details about his contact with the applicant, such as how often and under what circumstances he saw or spoke with the applicant.

Although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The record of proceedings contains various other documents, a residential lease dated March 1, 1992 and tax records from 1992 to 2000. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States on October 15, 1987, near Detroit, Michigan, and to have resided for the duration of the requisite period in Illinois. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act; and, continuous physical presence between November 6, 1986, until May 4, 1988, as required under Section 1104(c)(2)(C) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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