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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090
MAIL STOP 2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: SAN FRANCISCO

Date:

DEC 02 2008

MSC 02 227 60119

IN RE: Applicant:

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 "John F. Grissom".

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. 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 had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief.

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 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act on May 15, 2002. On April 10, 2007, the director denied the application. The applicant, through counsel, filed a timely appeal from that decision on May 10, 2007.

The record reflects that the applicant, a native and citizen of India, claims to have initially entered the United States without inspection on October 18, 1981, and to have departed the United States on only one occasions since that date through May 4, 1988 - from January 5, 1988 to February 10, 1988, to visit his ill mother.

The issue in this proceeding is whether the applicant has demonstrated that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. With regard to this time period, the record includes the following documentation:

- Fill-in-the-blank affidavits from [REDACTED] and [REDACTED] [REDACTED] dated in January 1993, stating that the applicant resided in Corona, New York, since October 1981.

- A letter from [REDACTED], dated January 4, 1993, stating that the applicant resided at [REDACTED], Corona, New York from October 1981 to September 1986, paying \$80 per week in rent including electricity, gas, and telephone.
- A letter from [REDACTED], dated January 4, 1993, stating that the applicant resided at [REDACTED] Corona, New York, since October 1986, paying rent of \$100 per week including electricity, gas, and telephone.

In summary, for the requisite time period, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no church attestations that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(v)(A) through (G). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security or Selective Service card, automobile license receipts, deeds, tax receipts, insurance policies or other similar documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"), that lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

It is concluded that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, 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.