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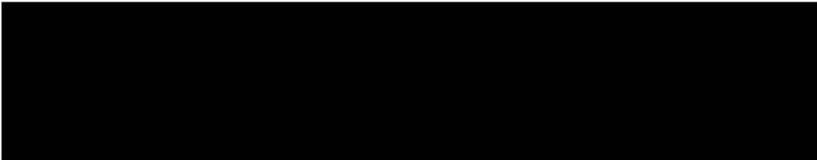
**JUN 30 2008**

IN RE: Applicant:



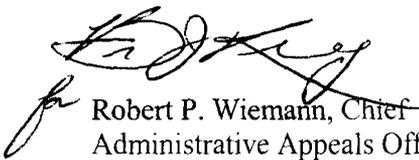
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director (director) in 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 grounds that the applicant failed to establish that he entered the United States before January 1, 1982, that he resided continuously in the United States in an unlawful status from then through May 4, 1988, and that he attempted to file a legalization application between May 5, 1987 and May 4, 1988 that was rejected.

On appeal, counsel submits some additional documentation, asserts that the evidence of record establishes the applicant's continuous residence in the United States during the requisite time period, and claims that the applicant meets all the other requirements for LIFE legalization.

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 October 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 17, 2002. Supplementing his Form I-485 the applicant submitted some current medical records, three current identity documents – including photocopies of his Indian passport, a California driver license, and an employment authorization card issued by the Immigration and Naturalization Service – and several letters or affidavits from residents of the United States, dating from September 2001 to May 2002, stating that they knew the applicant in southern California during the 1980s.

At his interview for LIFE legalization on March 10, 2004, the applicant stated that he initially entered the United States in October 1981; departed the United States at the end of August 1984 for a three-month trip to India, returning to the United States across the Mexican border at Tijuana; and departed the United States again in December 1987 for a briefer trip to India of two to three weeks, returning again through Tijuana. This information accorded with the information provided by the applicant in an application for temporary resident status (Form I-687) he had

prepared in 1990, in which he listed two absences from the United States since January 1, 1982 to visit family in India – including one from August to December 1984 and another from December 1987 to January 1988. The applicant also submitted one additional letter from an acquaintance who claims to have known him in the United States during the 1980s.

On December 26, 2006, the director issued a Notice of Intent to Deny (NOID), declaring that the evidence of record did not establish the applicant's entry into the United States before January 1, 1982 and continuous unlawful residence in the country through May 4, 1988. The director cited the applicant's testimony, at his interview for LIFE legalization, that one of his trips outside the United States during the 1980s exceeded the 45-day maximum prescribed in the regulations. The director also indicated that the letters and affidavits attesting to the applicant's presence in California during the 1980s were substantively weak. In addition, the director stated that the applicant had not provided any identity documentation from his earlier years in India and had not shown that he attempted to file a legalization application between May 4, 1987 and May 4, 1988, as required to qualify for class membership in one of the class action lawsuits (such as Catholic Social Services (CSS) v. Meese) that is a prerequisite to eligibility for legalization under the LIFE Act. The applicant was granted 30 days to submit additional evidence.

In response to the NOID counsel submitted some documentation of the applicant's identity from India as well as the United States, a statement by the applicant about his initial entry into the United States from Mexico, and a merchandise receipt dated in 1986 which does not identify the purchaser. Counsel asserted that the previously submitted affidavits and letters represented credible evidence of the applicant's residence in the United States during the 1980s, and that the director did not specify which departure of the applicant's exceeded 45 days.

On July 31, 2006, the director denied the application, indicating that the applicant's response to the NOID failed to overcome the grounds for denial. In particular, the director determined that the documentation of record failed to establish that the applicant was continuously resident in the United States in an unlawful residence from before January 1, 1982 through May 4, 1988, as required to be eligible for legalization under the LIFE Act.

On appeal, counsel asserts that the record amply demonstrates the applicant's identity, his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his attempt to file a legalization application between May 5, 1987 and May 4, 1988. With respect to the applicant's absence from the United States of more than 45 days in 1984, counsel claims that the applicant's lengthy stay in India was caused by "emergent reasons," within the meaning of 8 C.F.R. § 245a.15(c)(1), which delayed his return to the United States. As evidence thereof counsel submits a statement from the applicant and an excerpt from an unidentified publication about violence against Sikhs in India.

In accord with the director's decision, the AAO finds that the letters and affidavits in the record have limited evidentiary weight. Considering the length of time they claim to have known the applicant, most of the authors provide remarkably little information about his life in the United

States and their interaction with him during the 1980s. Though all of the authors claim to have known the applicant in California during that decade, none indicate exactly where he was living, much less identify a residential address, during the time period from January 1, 1982 through May 4, 1988. Two of the letters are from officials of a Sikh temple, at 1666 N. Vermont Avenue in Los Angeles, who indicate that the applicant was residing at the temple, temporarily at least, during the period of 1988 to 1990, and perhaps earlier. This information appears to conflict with the information the applicant provided in the Form I-687, application for temporary resident status, he prepared in 1990, wherein he listed only one residence – [REDACTED], in Chatsworth, California – during the entire period from 1981 to 1990.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

Even if the AAO were to accept, *arguendo*, the applicant's claim to have resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, the applicant has acknowledged that he was absent from the United States for a three-month period in 1984. It is undisputed that a three-month absence from the United States exceeds the 45-day maximum for a single absence prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien's continuous residence in the United States unless he or she can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

In the statement he submitted on appeal the applicant described his 1984 trip to India as follows:

I departed the United States on or about August 31, 1984 and traveled to India. I did not depart India until on or about December 1, 1984. The reason I did not return to the United States sooner was due to the conditions that existed in Punjab at the time. There was martial law, a general curfew and widespread violence against Sikhs both by the Indian Government and Hindus. The ability to travel was restricted. While I was in India I feared for my life and remained in hiding until I was finally able to arrange to depart India.

While the applicant's description of unrest in Punjab is historically accurate,<sup>1</sup> the AAO is not persuaded that conditions were so dire, or events so unexpected, that the applicant was unable to

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<sup>1</sup> The AAO takes notice of the facts that the Indian Army stormed the Golden Temple in early June 1984 and Prime Minister Indira Gandhi was assassinated by a Sikh bodyguard on October 31, 1984.

return to the United States within 45 days. The applicant made the decision to travel to Punjab during this period of unrest, and apparently did so without incident, which casts doubt on the applicant's claim that country conditions were so severe that he was unable to depart for three months. Since the unrest began well before the applicant's trip to India in late August 1984, the applicant can hardly claim that further, ongoing unrest during his stay in Punjab was unexpected. The assassination of Indira Gandhi, which did spark an increase in violence against Sikhs, occurred on October 31, 1984, which was already more than 45 days after the applicant's arrival in Punjab. The applicant claims that he was in hiding until he was able to arrange for his departure, but provides no details as to where and how long he was in hiding, and what events transpired that allowed him to depart. No documentation has been furnished to bolster the applicant's vague story, aside from the aforementioned excerpt from a publication about violence against Sikhs in India, which is not clearly identified and does not indicate what year is being discussed.

Based on the foregoing analysis, the AAO determines that the applicant has failed to show that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1) and *Matter of C-*, prevented his return to the United States from India within the 45-day period allowed in the regulation. Assuming *arguendo* that the applicant had been living in California since October 1981, as he claims, the three-month absence in 1984 would have interrupted his continuous residence in the United States.

For the reasons discussed above, the applicant has failed to establish that he 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 and 8 C.F.R. § 245a.15(c)(1). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.<sup>2</sup>

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

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<sup>2</sup> The record includes an identification record from the Federal Bureau of Investigation (FBI), based on the applicant's fingerprints, indicating that the applicant was arrested by the Police Department in Mountain View, California, on May 2, 1995, charged with falsely reporting a crime, and subsequently convicted by the Municipal Court in Palo Alto under section 148.5(a) of the California Penal Code, which specifies that anyone who knowingly and falsely reports to a policeman or other law enforcement official that a crime has been committed is guilty of a misdemeanor. In any future proceedings before Citizenship and Immigration Services (CIS) the final court disposition of this case, and those of any other arrests, should be provided.