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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 176 65359

Office: FRESNO, CA

Date:

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.

for 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 Fresno, 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 resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal the applicant asserts that the director did not take all of the evidence into consideration and misconstrued other evidence in the record.

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 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 December 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on March 25, 2002. At that time the record contained no evidence of the applicant's residence and physical presence in the United States during the periods required for LIFE legalization aside from a brief affidavit from a Canadian citizen, dated July 20, 1991, stating that the applicant came from the United States to visit him in Canada from July 10 to July 29, 1987.

On April 30, 2003 the applicant was interviewed to determine his eligibility for LIFE legalization. The applicant was requested to submit additional evidence, and responded in June and October 2003 with some additional documentation. The only piece of evidence bearing on the issue of the applicant's residence and physical presence in the United States during the 1980s was a photocopied letter from [REDACTED] of Bakersfield, California, dated April 22, 2003, stating that he treated the applicant for a medical condition on November 22 and 24, 1982. [REDACTED] stated that he treated the applicant for the same medical problem again in 1994-95, and for another medical problem in 2003.

On January 16, 2004 the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record did not establish the applicant's entry into the United States before January 1, 1982, his continuous unlawful residence in the United States from that date through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The applicant was granted 30 days to submit a rebuttal. In response the applicant submitted some additional documentation, including what appears to be an original version of the April 22, 2003 letter from [REDACTED], and an affidavit from [REDACTED] a resident of Bakersfield, California, dated April 29, 2003, stating that (s)he first met the applicant in December 1981 at a church in Bakersfield, that they became friends, and that they have socialized over the years at religious and cultural events, and at home.

On May 16, 2005 the director issued a Notice of Decision, denying the application on the grounds that the evidence of record was insufficient to establish the applicant's unlawful entry into the United States before January 1, 1982 and continuous residence in the country through May 4, 1988, as well as his continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

On appeal, counsel asserts that the director neglected to discuss the facts and the evidence presented by the applicant. Counsel cites the letter from [REDACTED] as evidence of the applicant's residence in the United States in 1982 that was ignored by the director. Counsel asserts that the director was mistaken in referring to the birth of the applicant's three children in India in 1985, 1987, and 1988 as evidence that the applicant did not continuously reside in the United States during those years because two of the children (twins) were actually born in April 1981, before the applicant's departure from India, and the third was conceived during the applicant's visit to Canada in July 1987. Additional documentation is submitted, including photocopies of the biographical pages of his children's passports, issued by the Indian government in 1997, and photocopies of medical records for the applicant with date stamps spanning the time period from November 22, 1982 to April 21, 2003.

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, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the country from November 6, 1986 through May 4, 1988. The AAO determines that he has not.

The only documentation in the record with dates going back to the 1980s are the medical records discussed above, which identify the applicant as the patient and describe various medical problems and treatments over a two-decade period, with date stamps of November 22, 1982; November 24, 1982; December 15, 1994; February 6, 1995; February 9, 1995; June 18, 2001; November 19, 2002; January 13, 2003; and April 21, 2003. The medical records do not have any letterhead, address, or other official marking, however, identifying the particular doctor's office or medical facility. Accordingly, it is unclear that the records relate to the examinations and treatments mentioned in the letter from [REDACTED] dated April 22, 2003. Moreover, even if the letter from [REDACTED] and the medical records were accepted as credible evidence of the applicant's residence in the United States as of November 1982, they do not demonstrate that the applicant was already resident in the United States before January 1, 1982, as required for legalization under the LIFE Act.

The only other evidence in the record of the applicant's residence and presence in the United States before January 1, 1982, is the affidavit from [REDACTED], dated April 29, 2003, who stated that (s)he met the applicant in December 1981 at a church in Bakersfield, California, and that they had been friends over the years since then, socializing at religious and cultural events, and in each other's homes. For the length of time the affiant claims to have known the applicant, (s)he provided remarkably little information about his life in the United States, and their interaction over the years. The affiant did not indicate where the applicant lived during the 1980s, much less provide a specific address, and did not indicate where the applicant worked. Furthermore, the affidavit was not accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiant's personal relationship to the applicant during

the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavit has little evidentiary weight.

There is no other evidence of the applicant's residence and presence in the United States during the years 1981-1988 (aside from the 1991 affidavit from the Canadian citizen who stated that the applicant came from the United States to visit him in Canada). In fact, the applicant stated on the biographical information sheet (Form G-325A) he filed with his LIFE Act application in 2002 that his last address outside the United States for more than one year was in the city of Jullandhar, Punjab province, in India, from May 1959 (his month of birth) until July 1987. If that was the case, then the applicant was clearly not continuously resident and physically present in the United States for the time periods required for permanent resident status under the LIFE Act. The AAO notes that July 29, 1987 was the date the applicant identified on his Form I-485, as well as on an earlier application for temporary resident status (Form I-687) he filed in 1991, as his date of last arrival in the United States. The foregoing information raises the question as to whether July 29, 1987 was the applicant's first, last, and only date of entry into the United States between December 1981 and May 4, 1988.

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.*

For the reasons discussed above, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). Therefore, 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.