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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date:

MSC 02 059 61334

MAR 20 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:

[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 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.

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), New York, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that she resided in the United States in a continuous unlawful status from a date prior to January 1, 1982 through May 4, 1988.

On appeal, counsel indicated that the evidence of record was sufficient to demonstrate that the applicant was continuously present in the United States during the statutory period.

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 during the statutory period 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 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.<sup>1</sup>

In the Notice of Intent to Deny (NOID), dated January 5, 2005, the director stated that the applicant failed to demonstrate her continuous unlawful residence in the United States during the requisite period. The director pointed out in the NOID that on the Form I-687, Application for Status as a Temporary Resident, signed by the applicant under penalty of perjury on March 19, 1992, the applicant stated that she had not exited this country since her November 1987 entry into the United States. The director also indicated that the applicant testified at her March 27, 2003 LIFE legalization interview that her most recent entry into the United States was during November 1987 and that she had never obtained a visa to enter the United States. Yet, at item 32 on the Form I-687, the applicant stated that on March 20, 1989 she gave birth to her daughter Ravneet in India. The director also stated that electronic databases available to Citizenship and Immigration Services (CIS) reflect that the applicant entered the United States on July 24, 1989 at John F. Kennedy Airport in New York City and was admitted as a nonimmigrant visitor for pleasure.<sup>2</sup> In addition, the director noted that the applicant had a passport which was issued to her on December 13, 1988 in India. The director stated that when asked about this at the LIFE legalization interview, the applicant did testify that she received this passport in India on December 13, 1988. The director also pointed out that while the applicant claimed that she entered the United States in 1981 and in 1987, at her LIFE legalization interview she was not able to identify at which U.S. city she entered or through which countries she transited when traveling from India to the United States in 1981 and 1987. The director indicated that the discrepancies and the deficiencies in the evidence of record concerning the applicant's July 24, 1989 documented entry and the applicant's undocumented entries which she claimed to have made in 1981 and in 1987 had led him to conclude that the preponderance of the evidence indicates that the applicant entered the United States for the first time on July 24, 1989.

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<sup>1</sup> 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).

<sup>2</sup> The AAO also notes that the record includes a copy of the applicant's passport page on which a U.S. Immigration Inspector stamped the applicant admitted on July 24, 1989 as well as the passport page on which a U.S. Immigration Officer in New Delhi stamped a multiple entry B1/B2 visa for the applicant on February 10, 1989.

In the NOID, the director also pointed out that the Jersey Trading Company letter in the record which indicates that the applicant worked at this company from May 1981 through August 1984 lists an address that is not related to a business named Jersey Trading Company. She also noted that the Photocards of Washington, Inc. c/o Parks Fabricare Center letter, which indicates that the applicant worked at this company from September 1984 through September 1987, lists a telephone number that is not assigned to any business named Photocards of Washington, Inc. c/o Parks Fabricare Center. In addition, the director pointed out that the Baldwin Parks Fabricare Centre, Inc. letter, which indicates that the applicant worked for that company from October 1987 through the date that this undated letter was signed, lists an address that is not connected to a company named Baldwin Parks Fabricare Centre.<sup>3</sup> The director indicates that these discrepancies in the employment letters cast doubt on whether the applicant was employed in the United States during the statutory period, and cast further doubt on the applicant's claim that she was residing in the United States during the statutory period.

The director granted the applicant thirty (30) days to submit additional evidence and attempt to overcome the bases for denial set out in the NOID. The record indicates that the applicant did not reply to the NOID. In the Notice of Decision, dated March 29, 2006, the director denied the application based on the reasons stated in the NOID.

On appeal, counsel asserted that the applicant did submit a timely response to the NOID in which she requested an additional 90 days to gather evidence to overcome the bases for denial set out in the NOID. There is no evidence in the record that the applicant replied to the NOID. Yet, the AAO would note that even if the applicant had submitted a request for an additional 90 days to reply to the NOID, given that the director did not go forward with a decision to deny until more than 14 months after the NOID was issued, the director, as a practical matter, allowed the applicant much more than an additional 90 days to submit a rebuttal to the NOID. Yet, the applicant never provided the director with any evidence or brief to rebut the findings in the NOID.

Also on appeal, counsel, in lieu of providing evidence, once again asserted that the applicant needed an additional 90 days to gather evidence to rebut the grounds of denial set forth in the NOID. Counsel asserted that the applicant needs to gather evidence of her residency during the requisite period, which had occurred many years earlier, and because that is difficult, the applicant needed additional time.

This office notes that all LIFE legalization applicants must provide evidence of residency that occurred decades earlier. There is nothing in the record to suggest that gathering such evidence is more difficult for this applicant than for other LIFE legalization applicants, such that this office might find that she has shown good cause to provide her with more time to gather evidence than others are allowed. Further, by the time

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<sup>3</sup> The AAO notes that the differences in the title of the two companies referred to here: Baldwin Parks Fabricare Centre, Inc. and Parks Fabricare Center are not typographical errors in this decision. The first company is listed in its letterhead stationery with "centre" spelled using the British English "-re" ending, whereas the second company uses the American English spelling for this word: "center". The second company name does not include the word "Baldwin". Apparently, the applicant is claiming to have worked for two unrelated companies with very similar names.

that the applicant filed the appeal brief with the AAO on May 26, 2006, she had had more than 16 months to gather evidence to rebut the bases for denial set forth in the January 5, 2005 NOID. However, the applicant has provided no arguments or evidence to rebut the bases for denial listed in the NOID. The AAO denies the request for additional time to gather and submit evidence.

The applicant submitted the Form I-687 signed on March 19, 1992 which states that she made no entry into the United States after November 1987. At her March 27, 2003 LIFE legalization interview, the applicant testified that she made no entry into the United States after November 1987, and she testified that she had never obtained a visa to enter the United States. Also at this interview, when asked about her claims that she entered the United States in 1981 and 1987, the applicant was not able to provide basic information relating to these entries such as at what U.S. city she entered and what countries she transited through when traveling from India to the United States. The Form I-687 also indicates that the applicant gave birth in India on March 20, 1989. CIS electronic records and documentary evidence in the file confirm that the applicant entered the United States at New York City on July 24, 1989 on a B2 visitor for pleasure, nonimmigrant visa. The record also indicates that the applicant obtained a passport in India on December 13, 1988, and the applicant confirmed this at the March 27, 2003 LIFE legalization interview.

These discrepancies in the record cast serious doubt on the authenticity of all the evidence of record and on the applicant's claim that she resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

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).

Such inconsistencies in the record may only be overcome through independent, objective evidence of the applicant's claim that she resided continuously in the United States throughout the statutory period. The applicant has failed to provide contemporaneous evidence that might be considered independent, objective evidence of her having resided in the United States from a date prior to January 1, 1982 and throughout the statutory period.

This office also finds that the various employment letters, affidavits and statements currently in the record which purport to substantiate the applicant's residence in the United States just before and during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States in an unlawful status from a date prior to January 1, 1982 through May 4, 1988.

Finally, the AAO would add that the applicant submitted a copy of her marriage certificate into the record which indicates that she married [REDACTED] during the statutory period on February 7, 1988 in [REDACTED], India.

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 as required under Section 1104(c)(2)(B) of the LIFE Act.

Thus, the applicant has not demonstrated that she is eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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