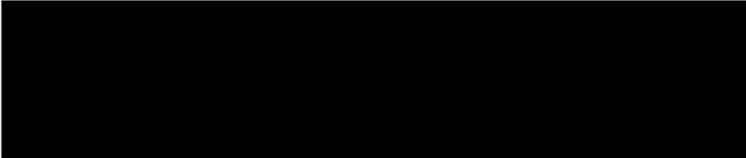


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Office: LOS ANGELES

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IN RE: Applicant:



APPLICATION:

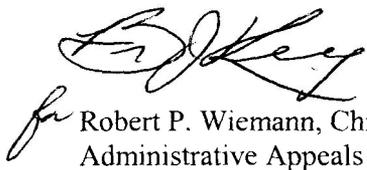
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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 Los Angeles, 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 entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel reiterates the applicant's claim to have resided in the United States continuously in an unlawful status since 1981 and submits some additional documentation.

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 was born on June 22, 1968 and claims to have lived in the United States since June 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on May 31, 2002. At that time the record included the following documentary evidence of the applicant’s residence and presence in the United States during the 1980s, which had been filed in June 1991 in connection with an application for status as a temporary resident (Form I-687) and an application for class membership in the *CSS v. Meese* class action lawsuit:¹

- A letter from the manager of the Chevron Service Center of Woodland Hills, California, dated April 28, 1990, stating that the applicant was employed as a full-time cashier from August 1981 to October 1986 at a salary of \$200/week.
- An undated letter from [REDACTED] the owner of India’s Cuisine Restaurant in Tarzana, California, stating that the applicant had been working as a waiter from October 1986 to the present at a salary of \$250 for a 40-hour week.

¹ *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

At his interview for LIFE legalization, on March 31, 2006, the applicant submitted some additional documents as evidence of his residence and physical presence in the United States during the 1980s, including:

An affidavit from [REDACTED] a resident of Granada Hills, California, dated August 10, 2005, stating that he met the applicant and his uncle at the Sikh Temple on Vermont Avenue in Hollywood in 1981, and had remained in touch by telephone and at social gatherings since then. According to [REDACTED] the applicant lived at various locations in Los Angeles over the years.

An affidavit from [REDACTED] a resident of Reseda, California, dated August 10, 2005, stating that he met the applicant in 1981 at a service station in Woodland Hills, California, that the applicant continued to work at the station for some years, and that the applicant told him in 1987 that he visited Canada in 1987 due to a family matter. According to [REDACTED], the applicant told him that his first residence in the United States was at [REDACTED] from 1981 to 1986, that he moved to [REDACTED] in Reseda around April 1986, and that he moved into the affiant's building in 1993, where he continues to live with his wife and son.

An affidavit from [REDACTED] a resident of Cypress, California, dated June 19, 1993, stating that he met the applicant at a party in 1981 and had remained in touch over the years. According to the affiant, the applicant claimed to have lived at the following addresses since 1981 – [REDACTED] in Canoga Park, [REDACTED] in Reseda, and [REDACTED] in Reseda – and had worked at India's Cuisine in Tarzana and B.S. Mac Chevron in Woodland Hills.

On June 30, 2006, the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record was insufficient to establish the applicant's entry into the United States before January 1, 1982, and his continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant responded to the NOID on July 10, 2006 with the following additional documents as evidence of his residence and physical presence in the United States during the 1980s:

A photocopied receipt from [REDACTED], a consumer electronics store in Jackson Heights, New York, dated August 11, 1981.

- A photocopied receipt from "Eastern Lobby Shops" dated August 12, 1981.

- A photocopied receipt from Sycamore Shell in Sun Valley, California, dated December 21, 1982.

On July 13, 2006, the director issued a Notice of Decision denying the application. The director found that the documentation submitted in response to the NOID did not overcome the grounds for denial. In the director's view, the evidence of record was neither sufficient nor credible enough to establish that the applicant entered the United States before January 1, 1982 and resided in the United States thereafter in continuous unlawful status through May 4, 1988, as required to be eligible for legalization under the LIFE Act.

On appeal, counsel asserts that the documentation of record is credible and establishes the applicant's eligibility for LIFE legalization. Counsel submits the following additional documents to supplement the previously submitted evidence of the applicant's residence and physical presence in the United States during the 1980s:

- A photocopied letter from [REDACTED], the owner of Mac Chevron, dated July 31, 2006, stating that he lost his lease on [REDACTED] in Woodland Hills, California, in August 1988, and subsequently moved to a new location at [REDACTED] in Tarzana.

A series of color photographs which counsel indicates show the applicant working at the Chevron Service Center.

- A photocopied letter from [REDACTED], dated July 31, 2006, confirming that he was the owner of India's Cuisine, that the applicant began working for him in October 1986, and that the restaurant was sold on September 11, 1996 to [REDACTED] who renamed it India's Tandoori. (A photocopy of the bill of sale is also submitted on appeal.)
- A photocopied letter from [REDACTED] dated July 31, 2006, confirming that he bought India's Cuisine from [REDACTED] on September 11, 1996, and renamed it India's Tandoori.
- A photocopy of an undated, handwritten note from [REDACTED], a dentist in Canoga Park, California, stating that the applicant came to his office in July 1981 with his uncle for dental treatment, and that he continued to treat the applicant thereafter.

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

The employment letters from the Chevron Service Center and the Indian restaurant do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate whether such records were available for review. The AAO notes that the letter from the owner of the Chevron station in 2006 states that he lost his lease on [REDACTED] in August 1988, but the subsequent letter from his manager in April 1990 still bears the [REDACTED] letterhead. Due to the infirmities discussed above, the employment letters are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1988.

Likewise, the photographs submitted on appeal, which counsel asserts show the applicant working at the Chevron Service Center, are not persuasive evidence of the applicant's residence in the United States during the 1980s. No dates appear on the photographs, and there are no definitive indicators in the photos as to when they were taken. Furthermore, all of the photographs appear to be digital, a technology that was not on the market until the 1990s.

With respect to the photocopied merchandise receipts – two dated in August 1981 and the other in December 1982 – those dated in August 1981 are from a store in Jackson Heights, New York, and a store which the applicant indicates was at the World Trade Center, also in New York. It is curious that the applicant claims to have been in New York in August 1981, since he claims to have been in California that same month to start his job at the Chevron Service Center, as well as the month before, July 1981, for dental work. None of the receipts bears a date stamp or other authenticating mark from the store, and none of them identifies any address for the applicant. As for the undated letter from the dentist stating that he treated the applicant in July 1981, no medical records from that initial visit, or any subsequent visits, have been submitted to corroborate the dentist's statement. For the reasons discussed above, neither the merchandise receipts nor the dentist's letter constitute persuasive evidence that the applicant was a resident of the United States during the years 1981 and 1982.

Finally, the affidavits from three acquaintances in the Greater Los Angeles area – one in 1993 and the other two in 2005 – who assert that they met the applicant in 1981, and maintained social ties over the years, provide few details about the applicant's life in the United States aside from the bare essentials of where he lived and where he worked. The affiants offered very little information about their interaction with the applicant during the 1980s, and are not supplemented by any documentary evidence – such as photographs, letters, and the like – of their relationship with the applicant. Accordingly, the affidavits have little evidentiary weight.

Based on the foregoing analysis – including the lack of probative evidence and the inconsistencies in the record – the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982 and 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, 8 U.S.C. § 245A(a)(2)(A). Therefore, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.²

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

² The AAO notes that court documents in the record indicate that On March 9, 1999, the applicant was convicted in Los Angeles Superior Court of a misdemeanor crime under section 647(b) of the California Penal Code (PC), and placed on probation. On December 7, 2005, having fulfilled the conditions of probation, the applicant filed a Petition and Order for Expungement under PC sections 17, 1203.4 and 1203.4a. The petition was granted and the conviction expunged on December 15, 2005.

Section 101(a)(48)(A) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(48)(A), defines "conviction" as follows:

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Under the statutory definition of "conviction" at section 101(a)(48)(A) of the INA, no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. See *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Any subsequent rehabilitative action that overturns a state conviction, other than on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings, is ineffective to expunge a conviction for immigration purposes. *Id.* at 523, 528. See also *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378, 1379 (BIA 2000) (conviction vacated under a state criminal procedural statute, rather than a rehabilitative provision, remains vacated for immigration purposes). In *Matter of Pickering*, a more recent precedent decision, the Board of Immigration Appeals reiterated that if a court vacates a conviction for reasons unrelated to a procedural or substantive defect in the underlying criminal proceedings, the alien remains "convicted" for immigration purposes. See *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003).

The record does not indicate that the expungement of the applicant's misdemeanor conviction was based on the merits of the case. For immigration purposes, therefore, the applicant remains convicted of a misdemeanor.

Since an alien convicted of three or more misdemeanors, or one felony, committed in the United States is ineligible for LIFE legalization, any future proceedings before Citizenship and Immigration Services must take the applicant's misdemeanor conviction into consideration.