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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK CITY

Date:

NOV 04 2008

[redacted]
consolidated herein]
MSC 02 029 61663

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 director in New York City. 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 asserts that the documentation submitted by the applicant is sufficient to establish that he continuously resided in the United States from before January 1, 1982 through May 4, 1988.

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 July 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 29, 2001. As evidence of his residence in the United States during the years 1981-1988, the applicant submitted an employment letter from [REDACTED], of Corinell Delicatessen, Inc. in New York City, with a handwritten date of August 31, 1987, stating that the applicant was employed from January 1986 to August 1987 on a part-time basis for four hours a day.

At his LIFE legalization interview on March 25, 2003, the applicant submitted the following additional documentation:

A letter from [REDACTED], the head priest at The Sikh Center of New York, Inc. in Flushing New York, dated March 5, 2003, stating that the applicant has been coming to the Sikh center for many years, that he listens to hymns, attends prayers every Sunday, takes part in making food, cleaning utensils and other services in the temple, and that he actively takes part in religious and social activities.

- An affidavit from [REDACTED], a resident of Astoria, New York, dated March 11, 2003, stating that he has known the applicant as a friend since January 1983.

- An affidavit from [REDACTED] a resident of Carteret, New Jersey, dated March 11, 2003, stating that he has personally known the applicant and the applicant's family since birth because the applicant is his second cousin, that the applicant has been living in the United States since July 1981, and that they visited each other's house very often.
- An affidavit from [REDACTED] address unstated, dated March 22, 2003, stating that the applicant resided with him in his home located at [REDACTED] Flushing, Queens, New York, from October 1987 to July 1989.

In a Notice of Intent to Deny (NOID), dated April 10, 2007, the director cited discrepancies between the applicant's testimony at his LIFE legalization interview on March 25, 2003, and other documentation in the record regarding his date of entry into the United States during the 1980s. The director concluded that these discrepancies and the lack of credible evidence in the record called into question the veracity of the applicant's claim that he resided in the United States from before January 1, 1982 through May 4, 1988. The applicant was given 30 days to submit additional evidence.

The applicant failed to respond to the NOID, and on June 28, 2007, the director issued a Notice of Decision denying the application for the reasons stated in the NOID.

On appeal the applicant provides some explanations for the documentary deficiencies and evidentiary inconsistencies noted by the director in the NOID. The applicant submits copies of documentation already in the record.

The AAO maintains plenary power to review each appeal 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 AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 letter from [REDACTED], dated August 31, 1987, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it does not describe the applicant's duties, does not indicate whether the information was taken from company records, and does not indicate whether such records are available for review. Nor was the letter supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during the years indicated. In addition, [REDACTED] does not provide any information

about the applicant prior to January 1986. Thus, the letter is not persuasive evidence that the applicant resided in the United States during the years 1986 and 1987, much less before January 1, 1982, as required for legalization under the LIFE Act.

The letter from the head priest of The Sikh Center of New York in March 2003 does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter from [REDACTED], dated March 5, 2003, states vaguely that the applicant has been coming to the center for many years, but provides no further details as to when the applicant's association began. The letter does not state where the applicant lived at any point in time during the 1980s. It does not indicate how and when [REDACTED] met the applicant, and whether the information about his attending prayers every Sunday and participating in other center activities is based on [REDACTED]'s personal knowledge, center records or hearsay. Since [REDACTED]'s letter does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that it has little probative value. The letter is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The three affidavits in March 2003 from individuals who claim to have resided with or otherwise known the applicant during the 1980s have minimalist formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant, the affiants provide remarkably few details about his life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationship with the applicant in the United States during the 1980s. In addition, two of the affiants do not claim to have known the applicant as early as 1981. [REDACTED] claims to have known the applicant since January 1983, and [REDACTED] claims to have known the applicant since October 1987. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, 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). Accordingly, 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.