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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEW YORK CITY

Date:

OCT 03 2008

MSC 02 126 60926

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.

*John H. Vaughan*  
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 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 director did not give proper weight to the evidence submitted by the applicant to establish his continuous unlawful residence in the United States during the 1980s. Counsel submitted no other evidence with the appeal.

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 February 4, 2002. As evidence of his residence in the United States during the years 1981-1988, the applicant submitted a series of affidavits with his Form I-485 application and at his interview on December 9, 2003. They included the following:

- Affidavits from [REDACTED] a resident of Garden City Park, New York, dated January 28, 2002 and December 8, 2003, stating that he had known the applicant since birth because the applicant is his cousin, that his father brought the applicant from India to the United States in 1981, that the applicant lived with them from 1981 until he moved to Chicago in 1989, and that he was aware that the applicant traveled to India in August 1987 and returned to the United states in September 1987.
- Affidavits from [REDACTED], a resident of New Milford, New Jersey, dated January 28, 2002, and December 8, 2003, stating that the applicant is his cousin, that his father brought the applicant to the United States in 1981, that the applicant lived with them from 1981 until he moved to Chicago in 1989, and that

he was aware that the applicant traveled to India in August 1987 and returned to the United States in September 1987.

- An affidavit from [REDACTED] a resident of Corona, New York, dated January 28, 2002, stating that that the applicant is his nephew and that he had personal knowledge that the applicant resided in the United States starting in September 1981 to the present (January 2002).
- An affidavit from [REDACTED] a resident of Bellerose, New York, dated January 28, 2002, stating that the applicant is her cousin's brother and that she had personal knowledge that the applicant resided in the United States starting in July 1981 to the present (January 2002).

An affidavit from [REDACTED], a resident of Flushing, New York, dated January 28, 2002, stating that the applicant is his cousin brother and that he had personal knowledge that the applicant resided in the United states starting from July 1981 to the present (January 2002).

- An affidavit from [REDACTED], a resident of Corona, New York, dated January 28, 2002, stating that the applicant was his fiancée's cousin, that he had personal knowledge that the applicant resided in the United States starting from September 1981 to the present (January 2002).

In a Notice of Intent to Deny (NOID), dated August 12, 2006, the director cited inconsistencies between the applicant's testimony at his LIFE Legalization interview on February 21, 2003, and other evidence in the record, and the applicant's lack of documentation to establish his continuous residence in the United States during the time period required for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

In response, the applicant offered some explanations for the lack of documentation and evidentiary inconsistencies cited in the NOID. The applicant submitted no additional documentation. On September 7, 2006, the director issued a Notice of Decision denying the application. The director found that the applicant's rebuttal was insufficient to overcome the grounds for denial stated in the NOID.

On appeal, counsel asserts that the director abused his discretion in denying the application, in that he failed to give proper weight to the evidence submitted. Counsel did not submit any other documentation with the appeal.

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 affidavits from [REDACTED], [REDACTED], and [REDACTED], all have minimalist, fill-in-the-blank formats with little input by the affiants. The information in the affidavits is superficial, and could just as easily have been provided by the applicant. While they all claim to have known the applicant since 1981, the affiants provided almost no information about his life in the United States and their interaction with him over the years. The affiants all claim to have personal knowledge of what they attested, but most of them failed to provide information on how they acquired the knowledge. Nor are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. Finally, all the affiants assert that the applicant resided at one address – 137-24 [REDACTED], Flushing, New York, from July 1981 up to 2002 or 2003 – whereas the applicant in the Form I-687 he filed in 1990 listed the following addresses as of 1981: [REDACTED], Flushing, New York, from July 1981 to July 1983; [REDACTED], Flushing, New York, from August 1983 to January 1987; [REDACTED], Flushing, New York, from February 1987 to February 1988; [REDACTED], Flushing, New York, from March 1988 to April 1989; and [REDACTED], Chicago, Illinois, from May 1989 up to March 1990.

The inconsistencies in the applicant's addresses undermine the credibility of the affidavits and his claim that he entered the United States in 1981 and resided continuously in an unlawful status through May 4, 1988. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

In view of their substantive shortcomings, as discussed above, 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.

At the applicant's LIFE Legalization interview on February 21, 2003, he testified that he first came to the United States on July 14, 1981, and that he made only one trip outside the United States in August 1987, when he traveled to India and returned to the United States in September 1987. On his Form I-687, Application for Status as a Temporary Resident, dated March 23, 1990, the applicant indicated one absence from the United States from August 1987 to

September 1987, to visit family in India. The applicant indicated no other absence from the United States.

A review of the record however, shows that the applicant was issued a passport in Cochin, India, on January 9, 1987. The passport indicated that the applicant was a student, resident in India. On page 33 of the passport are notations made on August 26, 1987, showing emigration check requirement suspended on September 31[sic], 1987, expected date of return December 31, 1987, and a ticket # [REDACTED] from Air India Airlines issued on August 12, 1987 from New York. On page 34 of the passport is a notation from the Ministry of External Affairs of India indicating that an emigration check was performed on September 1, 1987. On page 36 of the passport is a stamp from the United States Consulate General in Madras indicating that a visa application was received by the Consulate on July 7, 1987. On Page 6 of the passport is a copy of a non-immigrant visa issued to the applicant in Madras on August 5, 1987. CIS records show that the applicant entered the United States on September 19, 1987. No departure date was indicated.

The notations on the passport, as well as the applicant's testimony of only one absence from the United States on August 1, 1987, calls into question the veracity of the applicant's testimony that he was in the United States prior to 1987. In his NOID on August 12, 2006, the director notified the applicant of the inconsistencies and provided him an opportunity to rebut the inconsistencies and/or submit additional evidence. The applicant failed to provide adequate explanations or additional evidence. The inconsistencies noted above, and the weakness of the affidavits previously discussed, undermines the credibility of the applicant's claim that he entered the United States in 1981 and resided continuously in an unlawful status through May 4, 1988.

Based on the evidence of 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). 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.