

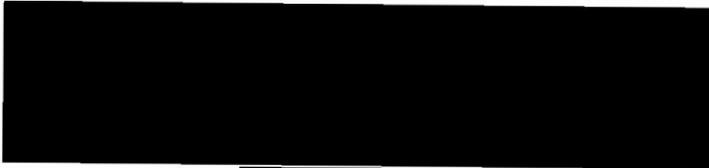
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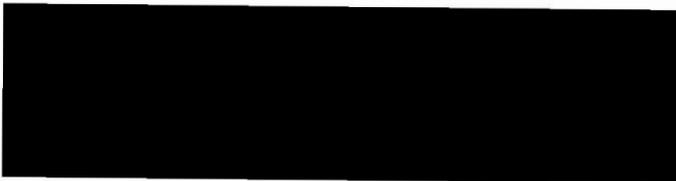
IN RE: Applicant:



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.

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

On appeal the applicant asserts that she has resided continuously in the United States since September 1981, and that a short trip to India in September 1982 did not interrupt her continuous U.S. residence.

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 September 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on April 10, 2002, and was subsequently interviewed on June 30, 2004. At that time the record included the following documentary evidence of the applicant’s residence in the United States during the 1980s:

A Landlord’s and Tenant’s Agreement between the applicant and [REDACTED] dated September 2, 1981, for residential property located at [REDACTED] in Pasadena, California.

An affidavit by [REDACTED], a resident of Pasadena, California, dated September 20, 1990, stating that she met the applicant in 1981 and knows that she left the United States to visit India due to a family emergency from June 10, 1987 to July 15, 1987.

- An undated letter from [REDACTED], the manager of East West Distributors at [REDACTED] in Los Angeles, California, stating that the applicant was

employed as a “stocklady” from September 1981 to February 1990 at the pay rate of \$5.00/hour.

An undated statement by [REDACTED], a resident of Berkeley, California, indicating that she knew the applicant while growing up during the years 1981-1988 in Westminster, California, because she used to visit family members in Pasadena and the applicant as well at [REDACTED]

On March 28, 2005, the director issued a Notice of Intent to Deny (NOID), citing some inconsistencies between the applicant’s testimony at her interview for LIFE legalization and the documentation on file with regard to the frequency and duration of her travel outside the United States during the 1980s, as well as the lack of credible evidence in the record of the applicant’s continuous residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant did not submit any new documentation in response to the NOID, or address the evidentiary discrepancies discussed therein.

On October 11, 2006, the director issued a Notice of Decision denying the application. The director concluded that the applicant failed to establish that she had resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, citing the applicant’s lack of explanation for a child born in India on September 17, 1982, the same date she testified that she traveled to the United States.

On appeal, the applicant asserts that she returned only briefly to India in September 1982 for the purpose of bearing her child, and that she returned to the United States a few days after the birth of her son. Thus, she maintained continuous residence in the United States during the requisite period for LIFE legalization. A photocopy of the previously submitted lease agreement was submitted 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 she resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. After reviewing all of the documentation of record, the AAO determines that the applicant has failed to demonstrate her continuous unlawful residence during the requisite period for legalization under the LIFE Act.

The Landlord's and Tenant's Agreement – which the applicant has submitted as evidence of her residence at [REDACTED] in Pasadena, California, from 1981 to 1989/1990 – contains some anomalies that call its authenticity into question. For one thing, it is dated September 2, 1981, which is nearly two months before the date the applicant claimed to have entered the United States – October 25, 1981 – in the Form for Determination of Class Membership in *CSS v. Meese* (a legalization class action lawsuit), which she prepared along with a Form I-687 (application for temporary resident status) in 1990. Furthermore, the term of the lease is handwritten as “8 years” with the 8 clearly rewritten over another indistinguishable figure. Eight years is a highly unusual length of time for a residential rental agreement, which typically run for one-year, or perhaps two-year, terms. In addition, the space at the top of the lease agreement “for recorder's use” is blank. Thus, there is no official signature, date stamp, or marking of any sort to authenticate the document. Finally, and most problematical, the document is a standard form – Wolcotts Form 994 – with printed information at the bottom of the document identifying it as a revised form dating from 1984. Accordingly, it could not possibly have been signed and dated on September 2, 1981.

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). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The applicant has provided no explanation for the evidentiary questions raised by the Landlord's and Tenant's Agreement. The AAO concludes that the document is not authentic and has no probative value as evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavit by [REDACTED], dated September 20, 1990, and the undated statement by [REDACTED], both of whom assert that they knew the applicant during the years 1981-1988, provided very little information about the applicant's life in the United States during the 1980s and their interaction with her over those years. Ms. [REDACTED] offered no details about how and exactly when she met the applicant in 1981, and the only thing she stated about the applicant thereafter is that she left the United States to visit India in June and July 1987. Ms. [REDACTED] was only three years old in 1981, according to the copy of an old passport page she submitted, which means that she was a young child when she claims to have visited with the applicant during the 1980s. Ms. [REDACTED] does not explain how she remembers meeting the applicant as early as 1981, when she was three, and provides no details about their visits together in succeeding years. Furthermore, neither [REDACTED] nor [REDACTED] submitted any documentary evidence of their personal relationships with the applicant during the 1980s. For the reasons discussed above, the AAO determines that the affidavit by [REDACTED] and the statement by [REDACTED] 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.

As for the undated letter from \_\_\_\_\_ indicating that he employed the applicant from 1981 to 1990, it does not comport with the regulatory requirements for employment letters set forth in 8 C.F.R. § 245a.2(d)(3)(i) because it 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. Nor did the letter state definitively that the applicant was employed with no layoffs or interruptions of any kind over the entire time period from 1981 to 1990. The letter was not supplemented by any earnings statements issued to the applicant by East West Distributors, or tax filings by the applicant, to bolster the credibility her claim of employment with the company. Due to the infirmities discussed above, the employment letter has little probative value as evidence of the applicant's continuous unlawful residence in the United States during the requisite period for LIFE legalization.

Based on the foregoing analysis – detailing the evident inauthenticity of the residential lease agreement and the lack of other probative evidence – the AAO concludes that the applicant has failed to establish that she 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. 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.