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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 008 62711

Office: LOS ANGELES

Date:

OCT 31 2008

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 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 asserts that the evidence submitted by the applicant was not properly examined by the director and that the documentation of record is sufficient to establish the applicant's eligibility for LIFE legalization.

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.)

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 June 1981, filed his application for permanent resident status under the LIFE Act (Form I-485) on August 20, 2001. As evidence of his residence in the United States during the requisite period for LIFE legalization the applicant submitted an affidavit from [REDACTED], a resident of [REDACTED], California, dated July 31, 2001, stating that the applicant is his cousin and he knows that the applicant lived in the United States from before January 1, 1982 through May 4, 1988, with a short absence in December 1987 and January 1988.

On a Form I-687 (application for temporary resident status) that he submitted in conjunction with a “Form for Determination of Class Membership in CSS [or LULAC] v. Meese” in 1990, the applicant listed the following residential addresses in the United States during the 1980s:

- June to October 1981: [REDACTED], in Los Angeles, California.
- October 1981 to December 1984: [REDACTED] in Hawaiian Gardens, California.
- February 1985 to the present (February 1990): [REDACTED], in Torrance, California.

The applicant also listed the following employment in the United States during the 1980s:

- June to October 1981: “Cleaning” with annual wages of \$5,000 at San Carlos Hotel in Los Angeles.
- October 1981 to December 1984: “Cleaning” with annual wages of \$5,500 at Globe Painting & Maintenance Company (location unstated).
- July 1985 to the present (February 1990): “Carpenter helper” with annual wages of \$6,000 at [REDACTED] in Torrance (employer unnamed).

As evidence of the residential addresses and employment experience listed above, the applicant submitted the following documentation with his Form I-687 and CSS/LULAC class membership determination form:

- A photocopied invoice of Globe M.R.S. Painting and General Maintenance Co. for a job dated October 15, 1980, with the notation "Completed" and the applicant's signature, dated October 16, 1980.

A photocopied notice on the letterhead of the San Carlos Hotel – entitled "Memo Part Time Personell (sic)" – advising the applicant and all part-time personnel to check the employee notice board for new shift hours, starting August 16, 1981.

- A photocopied Internal Revenue Service (IRS) Form 1099-MISC, Miscellaneous Income, for the tax year 1981 identifying the Globe Painting Company as the "Payer" and the applicant, residing at [REDACTED] Hawaiian Gardens, CA, as the "Recipient" of "Rents" in the amount of \$450.

A photocopied travel itinerary in the applicant's name from SITA World Travel, Inc. for flights from San Francisco via Singapore to India in December 1987 and from India via Tokyo back to Mexico on January 1, 1988.

An affidavit by [REDACTED], a resident of Hawaiian Gardens, California, dated February 25, 1990, stating that he was a neighbor of the applicant and knew that the applicant resided at [REDACTED] in Hawaiian Gardens from October 1981 to December 1984.

- An affidavit by [REDACTED], a resident of Artesia, California, dated March 3, 1990, stating that he knew the applicant resided in Hawaiian Gardens from October 1981 to December 1984, because he was the resident manager of the building until 1983, and that the applicant resided in Torrance from February 1985 to February 1990, during which time they remained friends.
- An affidavit by [REDACTED], a resident of Cypress, California, and friend of the applicant, dated February 25, 1990, stating that he knew the applicant had resided in Hawaiian Gardens from October 1981 to the present.

An affidavit by the applicant's brother, dated February 21, 1990, stating that he and the applicant had been self-employed since 1985 and that he currently resided at [REDACTED] in Torrance.

- An affidavit by [REDACTED], a resident of Norwalk, California, dated March 3, 1990, stating that he had known the applicant since January 1980.

The applicant subsequently filed an application for temporary resident status (Form I-687) on July 12, 2004 (MSC 04 286 11928), pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al. v. Ridge, et al.*, CIV NO. S-86-1343-LKK (E.D. Cal) on January 23, 2004, and *Felicity Mary Newman, et al. v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) on February 17, 2004 (CSS/Newman Settlement Agreements). The applicant submitted a series of new affidavits during the proceeding as evidence of his residence in the United States from before January 1, 1982 through May 4, 1988. They included the following:

Another affidavit by the applicant's brother, [REDACTED], a resident of Torrance, California, dated May 19, 2005, stating that he entered the United States in December 1984 and resided with the applicant at [REDACTED] in Torrance from February 1985 to 1990.

An affidavit by [REDACTED], a resident of La Verne, California, dated June 28, 2005, stating that he met the applicant in December 1980 (the year was corrected to 1981 in a subsequent affidavit dated September 23, 2005) at the "Sikh Temple Vermont" in Los Angeles, that he knows the applicant resided in the United States through May 4, 1988 except for a short absence in December 1987 and January 1988, and that he has interacted with the applicant at weekly religious functions in the temple and at many social activities over the years.

- An affidavit by [REDACTED], a resident of Fountain Valley, California, dated September 16, 2005, stating that he met the applicant in 1981 at the "Gurdwara Vermont" in Los Angeles, and that he attended various religious and social events with the applicant during the period from December 1981 to May 1988.

An affidavit by [REDACTED], a resident of Rancho Palos Verdes, California, dated September 19, 2005, stating that he knew the applicant in India, met him in the United States on July 4, 1981 while vacationing in California, and that they went to Disneyland together. According to [REDACTED], the applicant told him he had come to the United States illegally from Mexico. [REDACTED] stated that he knew the applicant had resided in the San Carlos Hotel in Los Angeles from June to October 1981, at [REDACTED] in Hawaiian Garden[s] from October 1981 to December 1985, and at [REDACTED] in Torrance from February 1985 to November 1991, and that the applicant traveled to India due to a family emergency in the first week of December 1987 and returned to the United States in the second week of January 1988.

- An affidavit by [REDACTED], a resident of Anaheim, California, dated September 24, 2005, stating that he met the applicant in November 1981 at his

business office, where the applicant worked as a “helper,” that he saw the applicant at various social events in succeeding years, and that he knows the applicant resided at the [REDACTED] address in Hawaiian Gardens and the [REDACTED] address in Torrance during the time periods indicated by [REDACTED] in the foregoing affidavit.

On November 17, 2005 the director denied the application for temporary resident status on the ground that the evidence of record did not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through May 4, 1988.¹

On May 16, 2007 the director issued a Notice of Intent to Deny (NOID) the application for permanent resident status (Form I-485). The director indicated that the documentation in the record was insufficient to establish the applicant’s continuous unlawful residence in the United States during the years 1981 to 1988, as required for legalization under the LIFE Act.

In response to the NOID counsel recounted and resubmitted copies of all of the documentation previously filed between 1990 and 2005 in connection with the applicant’s two Form I-687 applications and the current Form I-485 application. In counsel’s view this evidence satisfied the applicant’s burden of proof with regard to his continuous residence in the United States during the requisite years for LIFE legalization.

On June 8, 2007 the director denied the application for permanent resident status, indicating that the applicant had “failed to overcome the grounds for denial as stated in the NOID.”

On appeal counsel asserts that the evidence of record was not properly examined by the director, reiterates his contention that it establishes the applicant’s continuous residence in the United States during the requisite period for legalization under the LIFE Act, and once again submits copies of previously filed documents. No additional evidence is submitted on 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

¹ An untimely appeal (From I-694) was filed on March 15, 2006 (after multiple deficiencies in the original appeal were corrected). On June 9, 2006 the director rejected the appeal on the ground that it was not filed within the 30-day period provided in the regulation at 8 C.F.R. § 245a.2(p).

the United States in an unlawful status from before January 1, 1982 through May 4, 1988. After examining all the documentation of record, the AAO concurs with the director's denial.

The earliest dated document submitted by the applicant is the photocopied invoice of Globe M.R.S. Painting and General Maintenance Co. for a job ostensibly completed by the applicant in October 1980, as evidenced by the applicant's signature above the handwritten date of 10.16.80. This document appears to be fraudulent, however, since the applicant does not claim to have entered the United States until eight months later, in June 1981.

Similarly, the authenticity of the photocopied notice on the letterhead of the San Carlos Hotel, dated August 16, 1981, appears to be dubious. For instance, it contains obvious misspellings – such as “personell” instead of personnel, and “employe” instead of employee. It is also internally inconsistent – with a title line reading “MEMO PART TIME PERSONELL” (sic); followed by a line reading “NAME: [REDACTED]” addressed specifically to the applicant, followed later by a line reading “HOUSEKEEPING STAFF” under which three employees (including the applicant) are listed. Nor is there any official stamp or other mark on the document to verify that it actually dates from August 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). Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The probative value of the photocopied IRS Form 1099-MISC for the year 1981 is also highly questionable. It is simply one page of an income tax return for 1981. The applicant has not submitted the complete return, or any evidence that the complete return or the single page in the record were actually filed for that tax year. Indeed, there is no evidence that the tax form was prepared at any time prior to its submission with the applicant's initial Form I-687 in 1990. Accordingly, the IRS Form 1099-MISC is not persuasive evidence that the applicant was residing at [REDACTED] in Hawaiian Gardens, California – the address appearing on the form – in 1981.

As for the photocopied travel itinerary in the applicant's name from SITA World Travel, Inc. listing flights to and from India in December 1987 and January 1988, the document does not identify any address for the applicant. Thus, even if the document is viewed as genuine, it does not show that the applicant was residing in the United States at that time. Moreover, the document has no probative value whatsoever as evidence of the applicant's residence in the United States before 1987.

Thus, the foregoing documents – the only ones in the record bearing dates in the 1980s – have little or no probative value as evidence of the applicant's continuous residence in the United States from June 1981, the month he claims to have entered the country, through May 4, 1988.

For someone claiming to have lived in the United States throughout that seven year period, it is noteworthy that the applicant is unable to produce any further documentation from those years.

Moreover, the appearance of fraud – especially in the first two documents discussed above – casts a long shadow of doubt on the credibility of the weak affidavit evidence submitted by the applicant. The AAO agrees with the director’s assessment, stated in the NOID, that the affidavits do “not include enough details or specifics.” Considering how long the affiants claim to have known the applicant, their affidavits contain remarkably little information about the applicant’s life in the United States, such as what type of work he performed and for whom, and the nature and extent of the affiants’ interaction with him over the years. Nor were the affidavits supplemented by any evidence from the affiants – such as photographs, letters, or other documentation – demonstrating that they had personal relationships with the applicant in the United States during the 1980s.

For the reasons discussed above, the affidavits have little 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 AAO concludes, therefore, 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. 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.