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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: NEW YORK Date: OCT 31 2008

consolidated herein]
MSC 03 095 60104

IN RE: Applicant: [redacted]

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:

[redacted]

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 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 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 properly analyze the documentation of record. Counsel contends that the applicant meets the continuous residence requirement for legalization under the LIFE Act.

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 resided in the United States since March 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on January 3, 2003.

On February 24, 2006, the director issued a Notice of Intent to Deny (NOID) the application. After citing the requisite time periods of continuous residence and continuous physical presence in the United States to be eligible for LIFE legalization, the director cited apparent discrepancies in the applicant's testimony at his interview for LIFE legalization on May 3, 2004 and possible fraud in the photocopied pages of the applicant's passport with respect to travel to and from the United States during the 1980s. The applicant was granted 30 days to submit additional evidence.

The applicant filed a timely response through counsel, contending that the director was mistaken in finding any discrepancies or fraud in the applicant's interview testimony and passport pages. The response was accompanied by photocopies of a variety of previously submitted documentation which, in counsel's view, established the applicant's continuous residence in the United States since 1981.

On March 24, 2006, the director issued a Notice of Decision denying the application. The director stated that no new evidence had been submitted in regard to the issues discussed in the NOID and the documentation submitted with the response was already in the record. Accordingly, the applicant had not overcome the grounds for denial.

On appeal counsel reiterates his contention that the director made erroneous findings of fact in regard to the applicant's passport, and that the applicant is prepared to submit the original. Counsel asserts that the applicant first entered the United States with a B1/B2 visa at JFK Airport in 1981 and has lived in this country ever since, making one brief trip to India in March and April 1986 [1] which did not interrupt his continuous U.S. residence. Counsel maintains that the director ignored the documentation submitted in response to the NOID, and thus did not properly adjudicate the application.

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).

Upon review of the record the AAO is persuaded that the photocopied pages of the applicant's passport at issue in this proceeding are authentic. They show that the applicant was issued a B-1/ B-2 visa by the U.S. Consulate in Bombay on March 19, 1986, with a six-month validity period until September 19, 1986, and that the applicant was admitted to the United States with that visa in New York on April 29, 1986. There is no indication in the passport that the applicant departed the United States upon the expiration of his B-1/B-2 visa in September 1986. Indeed, there is documentation in the record – including photocopies of a New York State driver license issued to the applicant on December 15, 1986; a New York State auto registration receipt issued to the applicant on February 13, 1987; an insurance card issued to the applicant with an effective date of November 1, 1987; as well as federal, New York State, and New York City income tax filings for the years 1987 and 1988 – indicating that the applicant overstayed his visa and took up residence in the New York City area. Based on the foregoing evidence and the entire record in this case, the AAO concludes that the applicant resided continuously in the United States from the time of his entry into the country on April 29, 1986 through May 4, 1988 – the end date of the requisite period for LIFE legalization.

To be eligible for permanent resident status under the LIFE Act, however, the applicant must establish that his continuous unlawful residence in the United States began before January 1, 1982. Unlike the period after April 29, 1986, the applicant has not submitted any contemporaneous documentation demonstrating that he resided, or was even present, in the

[1] Counsel overlooked another trip to India from July 15 to August 14, 1987, which the applicant acknowledged in a Form I-687 (application for temporary resident status) he completed in May 1990.

United States before that date. The only evidence of the applicant's residence in the United States before April 29, 1986 is a series of affidavits and statements from acquaintances of the applicant, including:

- An affidavit by a resident of Arlington Heights, Illinois, dated May 30, 1990, stating that he had known the applicant for five years [since 1985] and knows that he traveled to India from July 15 to August 14, 1987.

  An affidavit by , a resident of Miami Beach, Florida, dated February 22, 1991, indicating that he has known the applicant since childhood, that they came from India to the United States together in March 1981, and until recently had roomed together.

- A statement by a resident of Elmhurst, New York, dated March 23, 2004, indicating that he met the applicant in April 1981 at a newsstand called Kapoor Bros. Inc. at Jamaica Station and Sutphin Boulevard in Jamaica, New York, where the applicant was working "as a helper compiling and assembling Sunday newspapers." Mr. indicated that he visited the applicant in his residence at in Plainsboro, New Jersey until March 1986, and that he also received visits from the applicant at his home in Elmhurst, Queens, New York.

  A notarized statement by , a medical doctor in Brooklyn, dated April 14, 2004, indicating that the applicant visited his clinic for minor ailments like colds and bronchitis between July 1981 to 1990.

  An affidavit by , a resident of Rego Park, New York, dated April 28, 2004, indicating that the applicant is his brother and lived at the following addresses between 1986 and 1990: (1) in Elmhurst, New York, May 1986 to December 1986; (2) in Brooklyn, New York, December 1986 to July 1987; and in Brooklyn, July 1987 to December 1990.

- A notarized statement by a resident of College Point, New York, dated May 1, 2004, indicating that one of her friends recommended the applicant as a good handyman, and that she called on him often for various jobs at her house between November 1981 and June 1989.

- A notarized statement by , also a resident of College Point, dated May 1, 2004, indicating that she met the applicant in July 1981 when he was working for one of her neighbors, and that he performed some minor repair and painting jobs for her between July 1981 and January 1990.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 to April 1986. The AAO determines that he has not.

Two of the affiants – and – do not claim to have any knowledge of the applicant in the United States before 1985 and 1986, respectively. Thus, their affidavits have no probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982.

The affidavit by says nothing except that he and the applicant came to the United States together in March 1981 and roomed together thereafter. Mr. does not provide any address(es) where he and the applicant lived, or the dates of their residence. Nor does he provide any information about the applicant's life in the United States during the 1980s, such as where he worked.

As for the statement by , who claims to have met the applicant at a newsstand in April 1981, he provides no information about the applicant over the next five years except that they made mutual visits to one another's homes until March 1986. Similarly, the notarized statements by and , who claim that the applicant did handyman jobs for them from 1981 through the end of the 1980s, provide no other information about the applicant's life in the United States during the 1980s. With so few details in the foregoing statements, it is impossible to discern how regularly the authors saw the applicant, and the length of time between contacts. Thus, the statements are not persuasive evidence that the applicant maintained continuous residence in the United States from 1981 up to 1986.

The notarized statement by , is not accompanied by any office records or other corroborative documentation from the applicant to show that he visited s clinic during the 1980s. does not indicate how often the applicant came in during the nine years between 1981 and 1990, and does not indicate where the applicant was living during that time. An occasional visit to the clinic would not necessarily indicate that the applicant maintained continuous residence in the United States during the years 1981 to 1986.

Finally, the applicant has not submitted any documentary evidence – such as photographs, letters, and the like – of his relationship to any of the seven individuals discussed above during the 1980s. Nor have any of the seven individuals submitted evidence of their own identity and presence in the United States during that decade.

Based on the foregoing analysis, the AAO determines that the affidavits and statements in the record have limited probative value. They are not persuasive evidence that the applicant entered the United States before January 1, 1982, or that his continuous residence in the United States began at any time before April 29, 1986.

Thus, the record does 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 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.

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