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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 228 62469

Office: CHICAGO

Date:

SEP 03 2000

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 District Director (director) in Chicago, Illinois. 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 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 applicant has submitted sufficient evidence to establish that she has resided continuously in the United States in an unlawful status during the statutory period required for adjustment 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 lived in the United States since March 1981, filed her application for legal permanent resident status under the LIFE Act (Form I-485) on May 16, 2002.

In a Notice of Intent to Deny (NOID), dated July 8, 2003, the director indicated that the applicant had not provided sufficient credible evidence to establish that she resided continuously in the United States from before January 1, 1982, through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

On August 11, 2003, the applicant submitted a rebuttal to the director’s NOID. In her response the applicant claimed that the director failed to articulate the reasons he found the evidence of record insufficient to establish her claim. **The applicant reiterated that she has submitted sufficient evidence to establish her claim.** The applicant did not submit any additional documentation.

Without taking into consideration the applicant’s rebuttal to the NOID, the director issued a Notice of Decision on October 27, 2005, denying the application based on the reasons cited in the NOID. The applicant timely filed an appeal, accompanied by a brief.

On January 17, 2007, the director issued a Notice of Action on Appeal. In this notice the director acknowledged receipt of the applicant's rebuttal to the NOID, but indicated that it failed to overcome the basis for denial stated in the NOID. The director also reviewed the appeal, and determined that it provided no grounds for reopening, or for approving the appeal. Accordingly, the appeal and record of proceeding were forwarded to the AAO for further consideration.

On appeal, counsel asserts that the director failed to properly evaluate all the evidence submitted by the applicant in support of her claim. In counsel's opinion, the evidence in the record is sufficient to establish that the applicant has continuously resided in the United States in an unlawful status from 1981 through 1988. Counsel submitted no additional 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 she 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 she has not.

The only evidence in the record of the applicant's residence in the United States during the years 1981-1988 consists of the following documents¹:

- An affidavit from [REDACTED], the pastor of the India Mission Telugu United Methodist Church in Oak Park, Illinois, dated April 24, 2005, stating that in 1981 the applicant and her daughter came to worship in the church, that since then the applicant has been very active in church activities, taking part in religious work in India, and that she has been a strong supporter for the church's outreach ministry.
- An undated letter from [REDACTED] a resident of Chicago, Illinois, stating that he has known the applicant since March 1981 and that she has been living in Chicago, Illinois.
- An affidavit from [REDACTED], a resident of Oak Park, Illinois, dated May 7, 2005, stating that he met the applicant in 1981 at the church in Oak Park,

¹ These documents were submitted with the I-687 filed on July 19, 2004.

that the applicant has been attending church since then, and that she is an active member of the church.

The affidavit from the pastor of the Indian Mission Telugu United Methodist Church, 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 April 24, 2005, does not state how long the applicant has been a member of the church or where the applicant lived at any point in time between 1981 and 1988. The letter does not indicate how and when [REDACTED] met the applicant, and whether the information about her attending services since 1981 was based on Dr. [REDACTED] personal knowledge, church records or hearsay. Since [REDACTED] 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 affidavits from [REDACTED] and from [REDACTED] stating that they have known the applicant since 1981, provided no detailed information about the applicant's life in the United States and her interaction with the affiants over the years. The affidavits were not 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 from January 1, 1982 to May 4, 1988.

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.