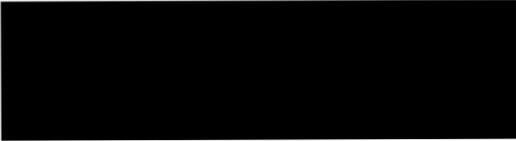


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FILE: [REDACTED] Office: SAN FRANCISCO Date: **SEP 30 2008**
MSC 02 037 62507

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.


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, San Francisco, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel asserts that the director erred in failing to give adequate weight to all of the evidence, and states the applicant has submitted sufficient evidence to establish eligibility. Counsel submits a brief and additional evidence, on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 amenability to verification. 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.

In the Notice of Intent to Deny (NOID) / RFE, dated January 15, 2003, the director requested that the applicant submit evidence establishing that he had entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The director also requested additional evidence, including a list of all absences from the United States, and final court disposition records of arrests. The applicant was granted thirty days to respond to the notice.

In the Notice of Decision, dated September 19, 2006, the director denied the instant application after determining that the applicant had failed to establish his entry in the United States before January 1, 1982, and the requisite continuous residence. The director also noted that the applicant had three children born in India on May 7, 1983, on March 12, 1986, and on November 11, 1989. However, the applicant had referenced only one absence to Canada, from October 14, 1987 to November 6, 1987.

On appeal, counsel asserts that the applicant has submitted sufficient evidence, including a number of affidavits, to establish his continuous residence. Counsel resubmits some of the same evidence previously provided, on appeal.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1).

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 during the requisite period. The applicant submitted affidavits and letters as evidence to support his Form I-485 application. The AAO has examined the entire record. Here, the submitted evidence is not relevant, probative, and credible.

Affidavits and letters

The applicant submitted the following:

1. An undated affidavit from [REDACTED], stating that he has known the applicant to have resided in the United States since July 1981.
2. A letter from [REDACTED], dated March 24, 2003, stating that he has known the applicant to have resided in the United States since December 1981.
3. An affidavit from [REDACTED], sworn to on March 25, 2003. [REDACTED] states that she has resided in Canada since March 1987, and the applicant, her elder brother, left India for the United States in the middle of 1981, and that he visited Canada in October 1987 for about three weeks while his wife was also in Canada, and he returned to California in the first week of November 1987.
4. An affidavit from [REDACTED], dated March 24, 2003, stating that the applicant, his brother, left India for the United States in 1981. The affiant also states that he resides in Canada but he communicates frequently with the applicant on the telephone.
5. An undated affidavit from [REDACTED] stating that he first came to the United States in 1985. The affiant states, however, that he knows that the applicant had left India in 1981 to go abroad, and has been living in the United States since that time.
6. An affidavit from [REDACTED], notarized on November 11, 2006, stating that he has known the applicant to have resided in the United States since June 1981. The affiant also states that he has kept in touch with the applicant since that time.
7. An affidavit from [REDACTED], notarized on July 12, 1990, stating that he has known the applicant to have resided in the United States since May 1981. The affiant also states that three weeks is the longest time he had not seen the applicant since he came to the United States.

The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

8. An affidavit from [REDACTED], notarized on September 29, 2001, stating that he has known the applicant to have resided in the United States since December 1981.

The applicant has submitted a letter and seven affidavits. However, these documents are questionable. The applicant claims that he has resided continuously in the United States since May 1981, and his only departure was in October 1987, for three weeks, to visit relatives, including his wife, in Canada. There is no indication in the record that the applicant had any other absences since his claimed arrival in May 1981. However, the record reflects that the applicant has three children born in India on May 7, 1983, on March 12, 1986, and on November 11, 1989. There is also no indication in the record that the applicant's wife has ever been in the United States. It is noted that counsel does not address this issue on appeal.

Contrary to counsel's assertion, the above unresolved discrepancies cast considerable doubt on whether the applicant resided in the United States from prior to January 1, 1982 as he claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

It is noted that the applicant's first Form I-687, submitted on July 11, 1990, was prepared by the Fresno Law Center in Fresno, California, although the applicant's address as shown on the Form I-687 was listed as [REDACTED], Redwood City, California. It is also noted that the applicant's attorney at the time, [REDACTED], was charged on May 31, 1991, with bribing Immigration and Naturalization Service officials, and he was subsequently convicted of these charges. As such, documents submitted with that application are not probative.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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