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Office: NEW YORK CITY

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IN RE:

Applicant: [REDACTED]

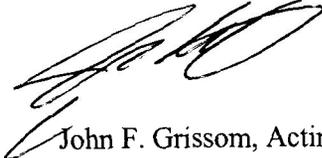
APPLICATION:

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:

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.


John F. Grissom, Acting 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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal counsel asserts that the director failed to properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant entered the United States before January 1, 1982, and that he resided continuously in the United States in an unlawful status, and was continuously physically present in the country, during the requisite periods 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.)

“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 December 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 9, 2001.

In a Notice of Intent to Deny (NOID), dated September 14, 2007, the director indicated that the documentation submitted by the applicant was not sufficient to establish his entry into the United States before January 1, 1982, his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1988 through May 4, 1988. The director noted that the applicant indicated on a Form I-687 (application for status as a temporary resident) dated May 30, 1990, that he was absent from the United States from July 1987 to January 1988, which far exceeded the 45 days limit for a single absence. The director indicated that such absence was not brief, casual or innocent and interrupted the applicant’s continuous physical presence from November 6, 1986 through May 4, 1988. The director also noted inconsistencies between the applicants’s

claimed initial entry into the United States in December 1980 and documentation in the record that indicate otherwise. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, counsel submitted a letter with explanations for some of the evidentiary discrepancies in the record. Counsel asserts that the applicant had requested the service to withdraw the Form I-687 dated May 30, 1990, because of errors committed by the preparer in completing the form. Counsel, however, does not provide any documentation in support of his assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, a review of the Form I-687 shows that the applicant prepared the application himself. Thus the assertion of counsel that a preparer other than the applicant made mistakes on the Form I-687, which should not be held against the applicant, is not credible.

On January 23, 2008, the director issued a Notice of Decision denying the application on the ground that the response to the NOID was insufficient to overcome the grounds for denial.

On appeal counsel asserts that the director should not have used information from the Form I-687 dated May 30, 1990 in his decision, because of preparer error and that the applicant had requested the service to withdraw that application. Counsel submits no new 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 he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988. The AAO determines that he has not.

The documentation submitted by the applicant in support of his claim that he was continuously resident and continuously physically present in the United States during the requisite periods for LIFE legalization consists of the following:

- A letter of employment from [REDACTED] in Yonkers, New York, dated March 10, 1988, stating that the applicant was

employed from August 1981 to January 1984, as a counter person and was paid \$140.00 per week.

A letter of employment from [REDACTED] in Jamaica, New York, dated March 24, 1988, stating that he applicant was employed from February 1981 to September 1988, as a waiter.

- A residential lease agreement between [REDACTED] Landlord, and three other individuals including the applicant dated June 8, 1981 for [REDACTED] for a three-year term beginning June 10, 1981 through June 9, 1984.
- A residential lease agreement between [REDACTED] Landlord, and three other individuals including the applicant, dated June 14, 1984 for [REDACTED] for a four-year term beginning June 15, 1984 through June 14, 1988.
- Various photocopied receipts, invoice with handwritten notations of the applicant's name with no address, dated 1982 and 1983. Photocopies of envelopes addressed to the applicant at [REDACTED] with illegible postmark dates.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The submitted evidence is not probative or credible.

The file contains two Forms I-687 (Application for Status as a Temporary Resident), dated May 30, 1990 and August 31, 1990. On the Form I-687 dated May 30, 1990, the applicant indicated that he last entered the United States on December 10, 1980, and traveled outside the United States only once – from July 1987 to January 1988, a trip to India to see his parents. The applicant did not indicate any other absences from the United States during the 1980s. The applicant listed the following residential addresses and employers during the 1980s:

Residences:

- [REDACTED] from December 1980 to July 1988;
- and [REDACTED] from January 1988 to the present (May 1990).

Employers:

Self-Employed from December 1980 to the present (May 1990).

On the Form I-687 dated August 31, 1990, the applicant indicated that he last entered the United States on June 10, 1987, and that he traveled outside the United States only once during the 1980s – from May 1987 to June 1987 – a trip to India lasting one month. The applicant did not

indicate any other absences from the United States during the 1980s. The applicant listed the following residential addresses and employers during the 1980s:

Residences:

- [REDACTED], from June 1981 to June 1984; and
- [REDACTED] from June 1984 to June 1989.

Employers:

- [REDACTED] in Yonkers, New York, as counter helper, from August 1981 to January 1984; and
- [REDACTED] in Jamaica, New York, as a waiter from February 1984 to September 1988.

The two Forms I-687 dated in 1990 contain completely different and contradictory information about the applicant's residential addresses and employment in the United States in the 1980s, and his absences from the United States during the 1980s.¹ The contradictions discussed above, undermine the credibility and reliability of documentation submitted by the applicant as evidence of his continuous residence and continuous physical presence in the United States during the requisite periods for LIFE legalization. Furthermore, the information on the Form I-687 dated May 30, 1990, is inconsistent with the two residential lease agreement dated June 8, 1981 and June 14, 1984.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *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 other evidence in the record. *See id.*

As noted above, the applicant has provided contradictory testimony and information in support of his application. 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 – consisting of a letters of employment, residential lease agreements, various receipts and photocopied letter envelopes – is suspect and not credible. For example, the photocopied letter envelopes have illegible postmark dates, and since no original is in the file, it is impossible to determine with any degree of certainty when the envelopes were mailed. Additionally, the photocopied letter envelopes

¹ The record includes a copy of the applicant's expired Indian passport, which indicates on page 35 that the applicant previously traveled on passport number [REDACTED] issued at Jalandhar on September 10, 1987. Although the applicant did not indicate a trip outside the United States in September 1987, this information strongly suggests that the applicant was in India at the time the passport was issued.

do not bear a United States postmark dates showing that the envelopes were processed in the United States.

The letters of employment from [REDACTED] and [REDACTED] do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not indicate the applicant's residence during the period of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. Nor are the letters supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. For the reasons discussed above, the AAO determines that the employment letters have limited probative value. They are not persuasive evidence that the applicant resided in the United States from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988 as required for legalization under the LIFE Act.

Thus, it must be concluded that the applicant has failed to submit credible documentation to establish that he continuously resided in the United States and was continuously physically present in the United States during the periods for legalization under the LIFE Act.

The applicant stated on the Form I-687 dated May 30, 1990, on the Form For Determination of Class Membership in Catholic Social Services (CSS) v. Meese, as well as the affidavit by [REDACTED] that he left the United States in July 1987 to travel to India and returned in January 1988 – an absence of more than 45 days. An absence of such duration interrupts an alien's continuous residence in the United States under 8 C.F.R. § 245a.15(c)(1), unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being." In response to the NOID, counsel asserted that the applicant was absent for only one month during the 1980s and that the extended absence from July 1987 to January 1988, indicated on the Form I-687 was due to errors committed by the preparer and that the applicant should not be punished for the error. A review of the records shows that the applicant personally completed and signed his Form I-687 and other CSS documentation under penalty of perjury.

At this late stage, the applicant cannot avoid the record he has created. As noted above, the Form I-687 and other accompanying documentation were prepared and signed by the applicant himself. The content of the Form I-687 is an indelible part of the record. The applicant is attempting to make a mockery of the immigration law because he has submitted a fraudulent application. Also, as discussed earlier, the applicant's claim that the contradictory information on the Form I-687 dated May 30, 1990 was the result of preparer error was found not credible. The applicant has failed to establish that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from India in 1987 within the 45-day period allowed in the regulation. For this reason as well therefore, the applicant has failed to

establish his continuous residence in the United States as well as his continuous physical presence in the country during the periods required for legalization under the LIFE Act.

Based on the foregoing analysis of the evidence, and the myriad contradictions therein, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i)(1) 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.