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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK CITY

Date: APR 20 2009

[consolidated herein]

MSC 01 362 60099

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.

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 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, the applicant asserts that he has submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. Applicant submits no additional documentation with the appeal.

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 February 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on September 27, 2001.

In a Notice of Intent to Deny (NOID), dated April 2, 2008, the director indicated that the applicant had not submitted sufficient credible evidence to establish his entry into the United States before January 1, 1982, and his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director noted inconsistencies between the applicant’s testimony at his LIFE legalization interview on January 7, 2004, and other documentation in the record with respect to date of his initial entry into the United States and his continuous residence in the country through May 4, 1988. The director indicated that the inconsistencies undermine the veracity of his claim. The applicant was granted 30 days to submit additional evidence.

The applicant responded and submitted additional documentation. On May 1, 2008, the director issued a Notice of Decision denying the applicant on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal, the applicant asserts that the director did not properly evaluate the documents in the record, and that he has submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. Applicant submits 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 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. The AAO determines that he has not.

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

- A letter of employment from [REDACTED] in New York City, dated October 8, 1989, stating that the applicant was employed from April 1981 to October 1989.
 - A letter from [REDACTED] in Richmond Hill, New York, dated March 3, 2002, stating that the applicant was a member of the congregation for a long time, and attended the Gurudwara regularly.
- A series of affidavits – dated in 1990 and 2001 – from individuals who claim to have rented an apartment to, or otherwise known the applicant resided in the United States during the 1980s.

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

The record reflects that the applicant filed a Form I-687 (application for status as a temporary resident) in April 1990. The applicant indicated on that form that he last entered the United States on October 12, 1987, and that he traveled outside the United States once during the 1980s – a trip to India – to attend his grandfather's funeral, from September 4 to October 12, 1987. The applicant did not indicate any other absences from the United States during the 1980s. A copy of the applicant's expired passport in the file, notes on one of the pages that the applicant "previously traveled on passport number [REDACTED] issued at Chandighr on 24.6.86. Has been reported lost." The information on the passport strongly suggests that the applicant was in India at the time the passport was issued. The applicant did not indicate anywhere in the record that he

traveled to India from the United States in 1986. Also, on the Form I-485 the applicant filed in 2001, he indicated that he has two children – a daughter born on September 27, 1987 and a son born on August 8, 1988, both in India. The applicant however, did not list these children on the Form I-687 he filed in 1990. There is no evidence in the record that the applicant's wife was in the United States during the statutory period. The applicant submitted photocopies of his children's birth certificates, which corroborated the information on the Form I-485. It is therefore inconceivable that the applicant's wife could have conceived and given birth to the applicant's children in India during the same period that the applicant claims he was physically residing in the United States. The contradictions discussed above regarding the applicant's continuous residence in the United States cast considerable doubt on his claim that he entered the United States before January 1, 1982 and resided continuously in the country during the period required for legalization under the LIFE Act.

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. *See 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.* 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 affidavits and letters from individuals who claim to have rented apartment to, or otherwise known the applicant during the 1980s – is suspect and not credible.

The letter from [REDACTED] c. in Richmond Hill, New York, 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] did not specify when the applicant became a member of the congregation, did not indicate where the applicant lived at any point in time between 1981 and 1988, how and when he met the applicant, and whether his information about the applicant was based on [REDACTED] personal knowledge, the temple's records, or hearsay. Since the letter does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), 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 letter of employment from [REDACTED] appears not to be genuine. The signatory of the letter did not identify himself and the authority with which he authored the letter. The letter is not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. In addition, while the letter

stated that the applicant was employed from April 1981 to October 1989, the applicant submitted an affidavit dated April 13, 1990, stating that he was self-employed during the period February 1981 to the present (1990). Thus, the letter has no probative value as evidence of the applicant continuous residence in the United States during the statutory period for legalization under the LIFE Act.

As for the affidavits in the record from individuals who claim to have rented an apartment to, or otherwise known the applicant, they have minimalist formats with very little input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981- the affiants provide remarkably few information about the applicant’s life in the United States and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants’ personal relationship with the applicant in the United States during the 1980’s. In view of these substantive shortcomings, and 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 analysis of the evidence in the record, 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. 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.