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

**U.S. Citizenship
and Immigration
Services**

L2

FILE:

MSC 02 184 60587

Office: LOS ANGELES

Date: APR 24 2009

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 Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant (1) failed to establish that he 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, and (2) had been convicted of a felony committed in California, making him ineligible for LIFE legalization under section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1).

On appeal counsel asserts that the director's decision was in error because (1) the applicant was only convicted of a misdemeanor in California, which does not make him ineligible for LIFE legalization, and (2) the affidavit evidence submitted by the applicant as evidence of his continuous residence in the United States during the 1980s was not properly evaluated.

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).

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, claims to have entered the United States in January 1981, resided continuously in this country during the 1980s, and departed the United States only once in that decade for a trip to India from May 24 to July 1, 1987. The applicant filed his application for permanent resident status under the LIFE Act (Form I-485) on April 2, 2002. At that time the only evidence in the record pertaining to the applicant's claim of residence in the United States during the 1980s was a brief affidavit by ██████████ a resident of Los Angeles, dated April 2, 1990, stating that he gave the applicant a ride to the airport for his trip to India to visit his family, though ██████████ did not specify when the applicant's trip occurred.

At his interview for LIFE legalization on February 19, 2004, the applicant submitted another affidavit from ██████████, a resident of Long Beach, California. ██████████ stated that he met the applicant in January 1981 at a Sikh temple in Los Angeles, that they were introduced by the applicant's brother whom he already knew, and that the applicant moved into a house with three other persons at ██████████, where he continued to live until March 1990. Mr. ██████████ stated that he gave the applicant \$500 for his trip to India in 1987, approximately 40 days in length, to visit his ill mother. The applicant worked with ██████████ as a "helper" selling ice cream on the street from January 1981 to August 1989, ██████████ indicated, which he knows because that was also ██████████ occupation at that time. ██████████ also stated that the applicant came to a party at his house in February 1986 to honor the birth of his first daughter.

On June 27, 2008, the director issued a Notice of Intent to Deny (NOID). The director indicated that the affidavit evidence submitted by the applicant was not sufficiently probative to establish his continuous residence in the United States from before January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

On July 21, 2008, counsel responded to the NOID, acknowledging that the first affidavit, from ██████████ had little evidentiary weight, but asserting that the second affidavit, from ██████████ provided detailed information and should be considered sufficient to establish the applicant's continuous residence in the United States during the requisite years for LIFE legalization.

On August 17, 2007, the director denied the application, ruling that the response to the NOID was insufficient to overcome the grounds for denial as stated therein. The director also cited the

applicant's criminal conviction in the State of California in December 2004 for attempting to buy or receive stolen goods. The director identified the offense as a felony and ruled that the applicant was also ineligible for LIFE legalization on that basis because a felony conviction in the United States bars an alien from adjustment to permanent resident status.

On appeal, counsel correctly points out that the applicant was convicted of a misdemeanor, rather than a felony, after the state decided to prosecute the charge as a misdemeanor. Since a single misdemeanor conviction does not make an alien *ipso facto* ineligible for LIFE legalization, the AAO will withdraw that ground for denial of the application. As for the other ground for denial, counsel reiterates his contention that the director failed to give due weight to the affidavit of [REDACTED]. No further documentation has been submitted, however, as evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he 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.

There is no contemporary documentation from the 1980s showing that the applicant resided in the United States at any time during the years 1981 to 1988. For someone claiming to have lived in the country since January 1981, it is noteworthy that the applicant cannot produce a solitary piece of documentation dating from the next seven years through May 4, 1988.

The affidavit from [REDACTED] who claims to have known the applicant in California during the 1980s, does include some details, but the overall information it offers about the applicant's life in the United States and his interaction with [REDACTED] is still skimpy, considering the number of years the affidavit covers. No photographs, letters, or other materials have been submitted to document the applicant's relationship with [REDACTED] during the 1980s. Nor has [REDACTED] submitted any documentation of his own presence in the United States during the 1980s.

In view of the paucity of evidence in the record, the AAO determines that the applicant has failed to establish that he 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.