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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

L2

FILE:

MSC 02 341 60809  
MSC 07 131 11490 - Appeal

Office: SEATTLE

Date: FEB 04 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 Seattle, Washington. 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 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 August 11, 2006, the applicant was sent a Notice of Intent to Deny (NOID), which noted deficiencies in the employment letters and affidavits that the applicant had submitted for the record. In his decision, the director found the affidavit of [REDACTED] to be contradictory because he was admitted to the United States as a conditional permanent resident on April 27, 1985 as the spouse of a US citizen and therefore did not live in the United States since 1980 in Yuba City, California. The director also found that [REDACTED] was admitted into the United States as a conditional permanent resident on March 5, 1981, as the spouse of a US Citizen. However, he failed to provide proof that he was living in the Los Angeles area since 1981 and met the applicant at the L.A. Sikh Temple or even that the Temple was in business since 1981. The director determined that as a result of the lack of information, the affidavit that [REDACTED] submitted was neither verifiable nor credible. The director also found that as [REDACTED] was granted Legalization on March 1, 1991 in New York City, and found that since his file was not created until September 18, 1987, his statement attesting that he knew the applicant since December of 1981 and that the applicant had been residing in Northridge, California since November of 1981 until August of 1987 to be neither credible nor verifiable.

On appeal, the applicant argues that [REDACTED], who received his conditional Green Card on April 27, 1985, did not contradict his statement in his affidavit because he was living here illegally in 1980. The applicant states that he sent the interviewing officer the alien number for [REDACTED] and provides the address of the Sikh Temple in Los Angeles where they used to meet. The applicant explains that [REDACTED] was admitted into the U.S. on March 5, 1981 as a conditional resident and he again provides the address of the Sikh Temple in Los Angeles where they used to meet. The applicant acknowledges that [REDACTED]'s file was created by the USCIS in 1987, but argues that he has been living in the United States in an illegal status up until 1987 and that they met at "the L.A. mutual ceremony."

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 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 pertinent evidence in the record is described below.

1. A copy of a notarized statement dated September 14, 1990, from [REDACTED] of Northridge, California, who states he has known the applicant since October 1980 and that he has knowledge of the applicant's residence in the United States since November 1981. He further states that when the applicant first came to the USA he stayed with him in his apartment "in [REDACTED]"
2. A notarized declaration dated February 20, 2002, from [REDACTED] of Auburn, Washington, who states he has known the applicant since 1975. He further states that the applicant told him in 1981 that he was going to America and "we" went to the New Delhi Airport to see him off.
3. An affidavit dated February 20, 2002, from [REDACTED] of Renton, Washington, who states he has known the applicant to have lived in Yuba City, California, and that he met him at the Yuba City Sikh Temple in January 1987.
4. An affidavit dated July 7, 2005, from [REDACTED] of Kent, Washington, who states he can attest to the fact that the applicant has been residing in Northridge, California, from November 1981 until August 1987.
5. An affidavit dated July 18, 2005, from [REDACTED] of SeaTac, Washington, who states that the applicant has been residing in Northridge, California, from November 1981 until August 1987. He also states that he met the applicant at the L.A. Sikh Temple in December 1981.
6. A copy of an undated employment verification letter from the manager and partner of Star Cleaners of Northridge, California, indicating the applicant worked at that company from November 1981 to August 1987.
7. A copy of an employment verification letter dated October 1990 from the owner and partner of [REDACTED] and [REDACTED] in Yuba City, California, indicating the applicant worked for the firm in the year 1987 and then to September 1990.

On appeal, the applicant argues that [REDACTED] (Item # 3 above), and [REDACTED] (Item # 4), were able to provide accurate residency information for him because prior to normalizing their immigration status, they were living in this country in an illegal status. He has provided no evidence to substantiate this assertion.

The employment verification letters (Items # 6 and 7) fail to conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letters do not include the applicant's address at the time of employment, periods of layoff, whether or not the information was taken from official company records, where the records are located, and whether United States

Citizenship and Immigration Services (USCIS) may have access to the records. Given these deficiencies, the employment verification letters are without probative value as evidence of the applicant's residence in the United States during the requisite period.

Other circumstances cause the applicant's evidence to be viewed with skepticism. The record reflects that on July 29, 1995, he filed a Form I-589, Application for Asylum and for Withholding of Removal, under the name § [REDACTED]. In that application, he stated that he lived in India from birth until February 20, 1994, when he arrived in New York City. On November 13, 1997, his Form I-589 was approved and he became a lawful permanent resident of the United States. On June 9, 1999, during his interview with a USCIS officer, the applicant executed a Form I-407, Abandonment by Alien of Status as Lawful Permanent Resident, in which he stated:

I had submitted a fraudulent claim for Political Asylum from my country of India under the fraudulent name of § [REDACTED]. My true and correct name is [REDACTED], a citizen and national of Punjab, India.

It is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

The applicant's Form I-210, Voluntary Departure Notice, dated June 9, 1999 establishes that he departed the United States on June 10, 1999 on a flight to India.

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.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

In addition, the applicant is inadmissible as he has violated section 212(a)(6)(C)(i). As noted above, the record of proceedings reflects that the applicant sought to and did procure permanent resident status through the filing of a fraudulent Form I-589. While this ground of inadmissibility may be waived, the applicant would remain ineligible for LIFE benefits as discussed above.

The appeal will be dismissed, and the application denied.

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