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U.S. Citizenship
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FILE:

MSC 03 088 61023

Office: NEW YORK, NEW YORK

Date: FEB 05 2009

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:

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 forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and 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 District Director (director), New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on August 11, 2007 because she found that the evidence in the record failed to demonstrate that it was more likely than not that the applicant resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988.

On appeal, the applicant indicated that the evidence in the record does demonstrate that the applicant resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988, and that he is otherwise qualified to adjust to lawful permanent resident status under the LIFE Act.¹

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.²

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date through May 4, 1988. *See* LIFE Act § 1104(c)(2)(B) and 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

- (1) 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.

¹ The applicant indicated that he would submit a brief or additional evidence to the AAO within 30 days of August 30, 2007, the date that he filed the appeal. As of February 2, 2009, the record indicates that the applicant has not filed any brief or additional evidence with this office. Thus, the AAO will analyze the appeal based on the evidence in the record.

² 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 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).

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 regulation at 8 C.F.R. § 245a.2(b) provides in pertinent part:

(b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

. . .

(9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

(10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

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 application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

Documentary evidence may be in the format prescribed by USCIS regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in

compliance with this regulation, a letter from an employer should be considered as a “relevant document” under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. In evaluating the evidence, *Matter of E-M-* also states that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. 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 petitioner or 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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, to deny the application or petition.

At issue in this proceeding is whether the applicant is able to establish that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988. Here, the applicant has not met that burden.

On or near February 20, 1991, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On December 27, 2002, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The record contains three statements and one affidavit relating to the applicant’s claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. The statements and affidavit include the following: 1) the statement of [REDACTED] of Miami, Florida, that is not dated, which indicates that [REDACTED] met the applicant in Miami, Florida in November 1981 at a religious meeting, that [REDACTED] used to see the applicant at various functions in Miami, and that the applicant had mentioned to him that he performed odd jobs in the Miami area; 2) the statement of [REDACTED], Sikh Cultural Society, dated May 3, 2004 on Sikh Cultural Society, Inc., Richmond Hill, New York, letterhead stationery which indicates that the applicant has visited the Sikh church or Gurudwara in Richmond Hill, New York “quite frequently” since 1984; 3) the affidavit of [REDACTED] dated May 3, 2004 which attests that the affiant has known the applicant since November 1981 when she met him while on vacation in Miami, Florida,

that she has seen the applicant during his annual visits to New York, and that they have remained in touch on a regular basis; and 4) the statement of [REDACTED] of Ocoee, Florida dated June 9, 2007 which states that [REDACTED] has known the applicant for twenty-five years, that the applicant has been in the United States since then, and that the applicant has visited her often. [REDACTED] attached two photographs, one which she claims is of the applicant, herself and others; and one which she claims is of the applicant, her husband and one other. There is no contemporaneous evidence in the record relevant to the applicant's claim that he resided continuously in the United States from a date prior to January 1, 1982 through May 4, 1988. There is no other statement in the record relevant to the applicant's claim that he was in the United States during the statutory period.

The record indicates that the applicant married in India during 1984 and that his daughter was born in India during May 1986. The applicant stated on the Form I-687 that he traveled to India for thirty five days during April 1984 through May 1984 in order to marry, and for one month during September 1985 through October 1985 in order to attend a wedding. He also indicated at his LIFE legalization interview that he reentered the United States as a B2 visitor during May 1984, October 1985, February 1989 and September 1990 in order to return to an unrelinquished, unlawful residence. There is no evidence in the record that he has filed a request for a waiver of any grounds of inadmissibility that may apply to him such as having entered the United States by fraud or misrepresentation.

On May 14, 2007, the director issued a notice of intent to deny (NOID) in which she indicated that she intended to deny the application for reasons which include the following: the statements and affidavit submitted into the record are not sufficiently detailed and credible in that they do not include: any copies of identity documents of the individuals who wrote the statements; any copies of documentary evidence that supports the claim that those who wrote the statements resided in the United States during the statutory period; and any indication that those who wrote the statements have any personal knowledge of the circumstances of the applicant's residency in the United States.

With the rebuttal, the applicant submitted the statement of [REDACTED] dated June 9, 2007. Ms. [REDACTED] also failed to provide any proof of her identity or of having resided in the United States during the statutory period. In addition, similar to the other statements in the record, her statement gave no indication that she had personal knowledge of the applicant's address in the United States during the statutory period or personal knowledge of the accuracy of the applicant's claim that he never exited the United States for more than 45 days in a single absence during the statutory period.

In the statement submitted with the rebuttal, the applicant also indicated that it is too much to expect the individuals who provided statements on his behalf regarding his residency in the United States to include specific months/dates and other details related to his residency in the United States during the statutory period, given how long ago that period was. In addition, the applicant discussed the details which the statements in the record did include such as the applicant's yearly participation in the Annual Sikh Day parade, every year since 1984.

In his rebuttal statement, the applicant also indicated that contrary to what the director wrote in the NOID, the statements in the record are amenable to verification in that they include contact

telephone numbers. The AAO concurs. The point in the NOID indicating that those who submitted statements into the record failed to include contact information is withdrawn. The applicant also explained that he did not keep any documentation of his November 1981 entry without inspection as it could have created problems for him if, for example, others found this proof of his illegal entry. That is why he does not have such documentation and has not provided such documentation. This office would note that a LIFE legalization applicant does not have an obligation to provide documentary evidence of having made an entry into the United States prior to January 1, 1982. Any language in the NOID that indicates that the LIFE legalization applicant must submit documentary evidence of such entry is withdrawn.

On August 11, 2007, the director denied the application based on the reasons set forth in the NOID.

On appeal, the applicant stated that the director had not contacted the telephone numbers listed on the statements in the record submitted to support his claim that he resided continuously in the United States during the statutory period. The applicant indicated that if the director had contacted the individuals who wrote the statements they would have been able to confirm the accuracy of the statements and that the individuals who wrote them are U.S. citizens.

As pointed out by the director in the NOID, the statements and affidavits in the record are deficient in that they do not include copies of any identity documents of those who wrote the statements, nor do they include any documentation to support the claim that these individuals resided in the United States during the statutory period. The director gave the applicant the opportunity to remedy this by providing such documentation with the rebuttal. However, even the one statement submitted in response to the NOID, written by [REDACTED] did not include copies of such documentation. Further, none of the statements in the record give any indication that the individual who wrote the statement is aware of the applicant's address in the United States during the statutory period or has personal knowledge of the accuracy of the applicant's claim that he was never outside the United States for more than forty-five days in a single absence during the statutory period.

The applicant's inability to provide any evidence to confirm the identities of those who submitted statements into the record on his behalf, including the individual who submitted a statement with the rebuttal, undermines the credibility of his statements, as does his inability to provide any documentary evidence to support the claim that those who wrote the statements were in the United States during the statutory period.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

This office finds that the various statements and affidavit in the record which were submitted to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the deficiencies in the record

regarding the applicant's claim that he maintained continuous residence in the United States from a date prior to January 1, 1982 and throughout the statutory period, and that these documents are not probative in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and through May 4, 1988. Thus, he is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

An application that fails to comply with the technical requirements of the law may be denied on those grounds by the AAO even if the Service Center or District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Thus, beyond the decision of the director, the AAO would note that the applicant is not eligible for permanent resident status under the late legalization provisions of the LIFE Act because he is inadmissible under section 212(a)(6)(C)(i) of the Act.

According to the record in May 1984, October 1985, February 1989 and September 1990, when the applicant presented himself for entry into the United States, he misrepresented himself as a B2 nonimmigrant visitor for pleasure. In fact, his intent upon returning was to continue residing unlawfully in the United States. Thus, in May 1984, October 1985, February 1989 and September 1990, the applicant procured entry into the United States by willfully misrepresenting a material fact. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 is admissible to the United States. *See* 8 C.F.R. § 245a.12(e). The applicant might only overcome this particular ground of inadmissibility if he applies for and secures a waiver for the ground of inadmissibility at issue in the matter. *See* 8 C.F.R. § 245a.18(c).

The applicant is not eligible for adjustment to permanent resident status under section 1104 of the LIFE Act for the reasons stated above, with each considered as an independent and alternative basis for denial.

Finally, this office notes that according to evidence in the record, during May 1996, the New York City Police Department arrested the applicant and charged him with aggravated harassment in the second degree, as defined within the New York Penal Code at § 240.30. At the New York City Criminal Court, County of Queens, the judge dismissed these charges on June 19, 1996. This arrest and the ultimate dismissal of the charges which followed do not affect the applicant's eligibility for the benefit sought in this matter.

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