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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 030 62985

Office: SAN JOSE

Date:

JAN - 5 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.

for John H. Vaughan
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 San Jose, California. 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 1, 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 did not properly evaluate the evidence submitted by the applicant. Counsel asserts that the applicant submitted sufficient credible evidence that he 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 January 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 1, 2001.

In a Notice of Intent to Deny (NOID), dated October 6, 2005, 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. Specifically, the director indicated that an affidavit submitted by [REDACTED] regarding the applicant’s employment in the 1980s was inconsistent with his testimony at his LIFE legalization interview and other evidence of record. Two other affidavits from [REDACTED] and [REDACTED] were found to be substantively deficient. The director indicated that the weak affidavits and the applicant’s failure to provide information about his wife and children on his first Form I-687 (application for status as a temporary resident), filed in 1990, and his Form I-485, undermined his overall credibility.

Furthermore, the director noted that the applicant procured his employment authorization in 1990 by bribing an immigration officer. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, counsel submitted a letter in which he asserted that the director did not properly evaluate all the documentation submitted by the applicant. Counsel asserted that the evidence of record was sufficient to establish the applicant's eligibility for LIFE legalization.

On June 6, 2007, the director issued a decision denying the application on the ground that the response to the NOID was insufficient to overcome the grounds for denial.

On appeal counsel reasserts that the director did not properly evaluate the affidavits submitted by the applicant in support of his application for legalization under the LIFE Act. Counsel submits copies of affidavits previously in the record.

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 physically present in the United States during the requisite periods for LIFE legalization consists of the following:

- An affidavit from [REDACTED] CEO of [REDACTED] in Fremont, California, dated January 8, 2003, attesting that the applicant was employed "on call basis part time" at Super Sandwich Factory located in Sunnyvale, California, as a cleaner from January 1981 to February 1994, and was paid in cash.

Affidavits from six acquaintances, dated in 1993, 2001, and 2002, attesting to have known the applicant since the 1980s. Three of the affiants were not discussed by the director in the NOID and denial decision.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

The file contains two Form I-687s (application for status as a temporary residence), dated in 1990 and 1993. On the Form I-687 dated in 1990 the applicant listed his address in the 1980s as: [REDACTED] Santa Clara, California, from 1981 to the present (1990); and listed his employer in the 1980s as: Self- employed. On the Form I-687 dated in 1993 the applicant listed the following addresses and employers in the 1980s:

Residences:

- [REDACTED] Fremont, California, from February 1981 to March 1986; and
- [REDACTED] Santa Clara, California, from April 1986 to the present (1993).

Employers:

- Farm near [REDACTED] in Fremont, farm labor, from February 1981 to April 1986; and
- [REDACTED] Sunnyvale, California, cook, from July 1986 to August 1990.

The two Forms I-687 contain contradictory information about the applicant's residential addresses and employers during the 1980s, which undermines the applicant's claim to have resided in the United States from before January 1, 1982 through May 4, 1988, and been continuously physically present in the United States from November 6, 1986 through May 4, 1988.

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 affidavit of employment from [REDACTED], CEO of NAZ Enterprises, in Fremont, California, attesting that the applicant was employed as a cleaner at his Super Sandwich Factory in Sunnyvale, California, from January 1981 till February 1994, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i). [REDACTED] did not provide the applicant's address(es) during the period of employment and did not indicate whether there were periods of layoff, since [REDACTED] stated that the applicant was "on call basis part time," which suggests that there were likely periods of layoff. [REDACTED] did not indicate whether the information about the applicant's employment was taken from company records, and did not indicate whether such records are available for review. Nor was the affidavit supplemented by earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed

during any of the years indicated. Thus, the employment affidavit has limited probative value. It is 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.

The affidavits from [REDACTED], and [REDACTED], dated in 1993, 2001 and 2002, have minimalist formats with vague and general information. The affiants provided remarkably few details about the applicant's life in the United States, such as where he resided or worked, and the nature and extent of 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 1980s. The brief affidavits from [REDACTED] and [REDACTED] have almost identical wording, and the affiants only claim to have known the applicant since 1985. [REDACTED] only provided information about the applicant's visit to Canada in 1987, and no information about the applicant's residence and presence in the United States during the 1980s. The other three affiants claim to have met the applicant in Sikh temples at three different locations in California during 1981, but provided only sparse information about the applicant during the rest of the 1980s. In view of these substantive shortcomings, the AAO finds that the 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, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

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, 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.