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U.S. Citizenship
and Immigration
Services

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FILE:

Office: GARDEN CITY

Date:

[REDACTED]
consolidated herein]
MSC 02 059 61312

JAN 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:

[REDACTED]
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 Garden City, New York. 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 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 failed to properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the documentation in the record is sufficient to establish that the applicant 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 April 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on October 31, 2001.

In a Notice of Intent to Deny (NOID), dated July 3, 2007, 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. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, counsel submitted a letter requesting an extension of time to submit a response. In the alternative, counsel asserted that the applicant had submitted sufficient documentation to establish his eligibility for LIFE legalization. No further documentation was submitted in response to the NOID.

On September 26, 2007, the director issued a Notice of Decision denying the application on the ground that the response to the NOID was insufficient to overcome the grounds for denial.

On appeal counsel asserts that the applicant has submitted the requisite evidence to establish his eligibility for LIFE legalization. Counsel submits no new 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, 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 continuously physically present in the United States during the requisite periods for LIFE legalization consists of the following:

- A letter of employment from Five Star Corporation in Falls Church, Virginia, dated March 12, 1992, attesting that the applicant was employed as a desk clerk from October 1987 to the present.
- An undated letter of employment from Moon Construction Company in Washington, D.C; attesting that the applicant was employed as an assistant clerk from September 1984 to September 1987.
- An undated letter of employment from Jersey Trading Company in Jersey City, New Jersey, attesting that the applicant was employed as a "helper" and later as a clerk from May 1981 to August 1984.
- An undated letter of employment from [REDACTED], Shoe & Accessories in New York City, attesting that the applicant was employed as a salesman for [REDACTED] in New York City, from November 1986 to December 1988.

An affidavit from the president of The Sikh Cultural Society, Inc. in Richmond Hill, New York, dated April 19, 1991, attesting that he had known the applicant since January 1981, that the applicant was a member, and that he attended services regularly.

Two merchandise receipts from Countywide Automotive, Inc. in Flushing, New York, dated September 30, 1984, and from New York Telephone, dated October 14, 1981, with handwritten notations of the applicant's name and address. A lab report from MetPath in Teterboro, New Jersey, dated August 12, 1986, identifying the applicant as the patient.

- An affidavit and five statements – ranging from 1991 to 2001 – from acquaintances claiming to have resided with or otherwise known the applicant in the United States during the 1980s.

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

The file contains two Forms I-687 (Application for Status as a Temporary Resident), dated December 31, 1990, and March 19, 1992. On the Form I-687 dated December 31, 1990, the applicant indicated that he was absent from the United States twice, from January 10, 1988 to February 20, 1988, to get married in India, and from February 5, 1989 to March 9, 1989, to visit his family in India. The applicant listed the following residential addresses and employers during the 1980s:

Residences:

- [REDACTED] Queens, New York, from February 1981 to December 1984;
- [REDACTED] Corona, New York, from January 1985 to December 1988;
- [REDACTED] Flushing, New York, from January 1989 to the present (1990).

Employers:

- "News-Paper Seller," from 1981 to 1986;
- Minu Minu in New York City, as a sign maker, from November 1986 to December 1988;
- National Linen Center, in Brooklyn, New York, as a sign maker, from January 1989 to the present (1990).

On the Form I-687 dated March 19, 1992, the applicant indicated that he was absent from the United States only once, from October 1987 to November 1987, to see his family in India. The applicant listed the following residential addresses and employers during the 1980s:

Residences:

[REDACTED] Jersey City, New Jersey, from April 1981 to August 1984;

[REDACTED], McLean, Virginia, from September 1984 to September 1987;

- [REDACTED], Annandale, Virginia, from September 1987 to the present (1992).

Employers:

Jersey Trading Company, in Jersey City, New Jersey, as a “helper,” from May 1981 to August 1984;

Moon Construction, in Washington, DC., as a clerk, from September 1984 to September 1987;

Five Star Corporation, in Falls Church, Virginia, as a desk clerk, from October 1987 to the present (1992).

The Forms I-687 from 1990 and 1992 contain completely contradictory information about the applicant’s residential addresses and employment during the 1980s, and his absences from the United States during the 1980s,¹ which undermines the credibility of most of the documentation the applicant submitted as evidence of his continuous residence and continuous physical presence in the United States during the requisite periods for LIFE legalization.

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. *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 receipts from Countrywide Automotive, Inc. dated September 30, 1984, and from New York Telephone dated October 14, 1981, have handwritten notations of the applicant’s name and address. The receipt from Countrywide Automotive, Inc. has no date stamp or other official markings to verify the date it was written. Both receipts identified the applicant’s address as [REDACTED] Flushing, New York – which conflicts with the information provided by the applicant on his second Form I-687, dated March 19, 1992, identifying the applicant’s address in 1981 as [REDACTED] Jersey City, and his address in September 1984 as [REDACTED] [REDACTED], McLean, Virginia. Thus, the receipts do not appear to be genuine. The AAO concludes that they are not persuasive evidence of the applicant’s residence in the United States in the years 1981 and 1984.

The lab report from MetPath dated August 12, 1986, identifying the doctor as [REDACTED] [REDACTED], listed [REDACTED] as the patient. The report did not indicate the applicant’s complete

¹ The record includes a copy of the applicant’s marriage certificate which shows that he was married in India on February 7, 1988. The applicant acknowledged this absence from the United States on his first Form I-687, but not on his second.

name and did not identify any address for the applicant. Thus, the lab report has limited probative value. Even if the AAO accepted the report as credible evidence that the applicant received medical service in the United States in August 1986, it is not sufficient to establish that the applicant was residing in the United States at that time, much less before January 1, 1982, as required for LIFE legalization.

The letters of employment from [REDACTED] of Five Star Corporation, from [REDACTED] of Moon Construction Company, from [REDACTED] of Jersey Trading Company, and from [REDACTED] do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not indicate the applicant's residence during the time of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. Nor are the letters supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. For the reasons discussed above, the AAO determines that the employment letters have limited probative value. They are 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 letter from the president of The Sikh Cultural Society, Inc. 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], dated April 19, 1991, vaguely stated that the applicant was a member of their congregation and that he had known the applicant since January 1981, but did not state exactly when the applicant became a member, did not identify the applicant's address at any point in time between 1981 and 1988, did not indicate how and when he met the applicant, and did not state whether the information about the applicant's membership and activities at the center was based on his personal knowledge, the Cultural Society'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), the AAO concludes that 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, and continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

The affidavit from [REDACTED], dated October 17, 2001, and the statements from [REDACTED], [REDACTED], and [REDACTED] in 1990 and 1991, all whom claim to have resided with or otherwise known the applicant during the 1980s, have minimalist formats with vague and general information. The authors provided remarkably few details about the applicant's life in the United States, such as where he worked, and the

nature and extent of their interaction with him over the years. Nor are the affidavit and statements accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors’ personal relationship with the applicant in the United States during the 1980s. Furthermore, the statements from [REDACTED] and [REDACTED] regarding the applicant’s residential addresses in the 1980s are contradicted by information on the applicant’s Form I-687, dated December 31, 1990. Finally, only two of the authors claim to have known the applicant before January 1, 1982. In view of these substantive shortcomings, the AAO finds that the foregoing documents 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, and the myriad contradictions therein, 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.