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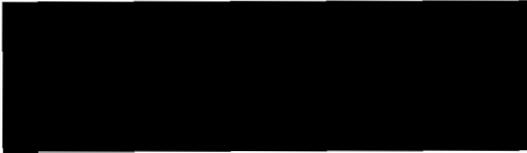
Office: CHARLOTTE

Date: 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:



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 Charlotte, North Carolina. 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 applicant has submitted sufficient documentation to establish 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. Counsel also submits additional documentation.

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 September 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on January 7, 2003.

In a Notice of Intent to Deny (NOID), dated August 21, 2006, the director indicated that the affidavits in the record were insufficient to establish the applicant’s continuous residence and continuous physical presence in the United States during the requisite periods for LIFE legalization, and also cited inconsistencies between the claims of the applicant and the documentation of record regarding the applicant’s initial date of entry into the United States and his dates of residence and physical presence in the United States during the 1980s. The applicant was granted 30 days to submit additional evidence.

The applicant did not respond to the NOID, and on October 16, 2006, the director issued a decision denying the application based on the grounds stated in the NOID.

On appeal counsel offers some explanations for the evidentiary inconsistencies discussed in the NOID and asserts that the director did not provide due process to the applicant by not issuing a Request for Evidence (RFE), not giving the applicant adequate opportunity to respond to the NOID, and not properly evaluating the documentation of record in the denial decision. Counsel submits additional 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 physically present in the United States during the requisite periods for LIFE legalization consists of the following:

- A letter from [REDACTED] of the Sikh Temple Gurdwara Yuba City, in Yuba City, California, dated December 4, 2006, stating that he had known the applicant since 1981, when the applicant joined the temple service group, and that the applicant was responsible for all cleaning, security, decorations and preparing the temple for the celebration of religious festivals.

Five affidavits of witness from friends, dated in 1990 and 2006, attesting that they had knowledge the applicant has resided in the United States since 1981.

- Photocopies of three letter envelopes allegedly mailed to the applicant in the United States from India in the years 1982, 1985, and 1986.

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 letter from the Secretary of Sikh Temple Gurdwara Yuba City, in Yuba City, California, 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 December 4, 2006, stated generally that he had known the applicant since 1981 when the applicant came from India and joined the Gurdwara service group, but did not indicate whether the applicant was a member of the temple and, if so, exactly when he became a member. The letter did not state where the applicant lived at any point in time during the 1980s, was vague about how and when [REDACTED] met the applicant, and did not clearly indicate whether his information about the applicant and his activities at the temple was based on [REDACTED] personal knowledge, the temple records, or hearsay. Since the letter did 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 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.

As for the affidavits in the record – dating from 1990 and 2006 – from acquaintances who claim to have resided with or otherwise known the applicant during the 1980s, all have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provide remarkably little information about his life in the United States, such as where he worked, and 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. In view of these substantive shortcomings, 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.

The three photocopied envelopes with postmarks that appear to date from the 1980s (1982, 1985, and 1986, according to the applicant) have marginal evidentiary weight. The postmarks on each of the three envelopes appear to have been altered by hand, so that it is impossible to determine the dates of the postmarks with any certainty. There are four different stamps on the three envelopes, two of which (the 1-rupee hybrid cotton stamp and the 2-rupee weaving stamp) were issued in 1980, one of which (the 50p dairy industry stamp) was issued on January 25, 1982, and one of which (the 25p plowing farmer stamp) was issued in 1985. *See Scott 2006 Standard Postage Stamps Catalogue*, Vol. 3, pp. 810, 812. While the two envelopes assertedly postmarked in 1985 and 1986 have stamps dating from 1980 and 1982, the envelope assertedly postmarked in 1982 has a stamp dating from 1985. Since the postmark date on this envelope is illegible on the photocopied version in the file, the AAO concludes that the envelope was not postmarked in 1982 and could not have been postmarked before 1985.

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.*

Even if the AAO viewed the envelopes as acceptable evidence of the applicant's residence in the United States as of 1985-1986, they would not establish the applicant's residence in the United States before 1985 much less before January 1, 1982, as required for legalization under the LIFE Act.

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 November 6, 1986 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.