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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK
- consolidated herein]

Date:

JAN 06 2009

MSC 03 193 60085

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, New York, New York. 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 had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, the applicant submits a brief statement and additional documentation.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

“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.

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The issue in this proceeding is whether the applicant has demonstrated that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

The record contains the following information regarding the applicant’s testimony and submissions:

1. The applicant filed a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), on or about April 13, 1990. In connection with that application, the applicant stated that he had first entered the United States without inspection along the U.S.-Canadian border

in 1981 and that he had departed the United States on only one occasion – from June 1987 to February 1988 – in order to visit family in India. He also submitted an undated letter from [REDACTED] General Manager of [REDACTED] in Astoria, New York, stating that the applicant had worked for him since 1981 and had returned to India from June 1987 to February 1988.

2. The applicant filed a Form I-589, Application for Asylum and Withholding of Deportation, on May 28, 1997 (under alien registration number [REDACTED]). In connection with that application, the applicant stated that he joined [REDACTED] in India in 1986, and was arrested in India in June 1986. He further stated that he was again arrested in India in December 1987, after which he continued his activities with [REDACTED].
3. In removal proceedings before an Immigration Judge (IJ) on April 13, 1988, the applicant stated that he first came to the United States in February 1988 and that before then he had lived in India. In particular, the applicant stated that he had resided in New Delhi, India, from 1984 to 1986 prior to moving to Punjab, India. The applicant also submitted documentation indicating that he had been hospitalized in India during June 1986 and from December 1987 to January 1988.
4. The applicant filed a Form I-687 on January 9, 2006. In connection with that application, the applicant indicated that he had last entered the United States without inspection in February 1989 and that he had been absent from the United States on only four occasions since his initial entry in 1981 in order to visit family in India - from May 1986 to June 1986; June 1987 to August 1987; December 1987 to January 1988; and, December 1988 to February 1989. The applicant also submitted an affidavit dated November 3, 2005, from [REDACTED] of Texedo, New York, stating that the applicant had resided at various addresses in Richmond Hill, New York, from 1982 to August 2002, except for four short visits to India; a letter dated June 30, 2004, from [REDACTED] stating that he was working as [REDACTED] in Richmond Hill, New York from 1980 to 1989 and that the applicant was working in langar service at the society during an unspecified period of time; letters dated July 27, 2004, from [REDACTED] in Livingston, California, stating that the applicant had been employed during the 1982 through 1987 agricultural seasons as a farm laborer.

The applicant filed the current Form I-485, Application to Register Permanent Resident Status or Adjust Status, under the LIFE Act, on April 11, 2003. In connection with this application, the applicant indicated that he had last entered the United States in February 1988.

In a Notice of Intent to Deny (NOID) the application, the director noted the multiple inconsistencies in the record that raised questions of credibility regarding the applicant's claims.

The director granted the applicant 30 days in which to submit additional documentation in response to the NOID.

In response to the NOID, the applicant submitted a letter stating that when he filed his application for asylum in 1997 he did not mention previous entries into the United States because he misunderstood the question, and that he did not mention his departures from the United States due to his political beliefs. He stated that he departed the United States from May to June 1986 for four weeks; from June 1987 to August 1987 for approximately five to six weeks; from December 1987 to January 1988 for four weeks; and, from December 1988 to February 1989. The applicant also resubmitted the letter from [REDACTED] noted above, stating that the applicant had resided at various addresses in Richmond Hill, New York, from 1982 to August 2002, except for four short visits to India.

On February 15, 2006, the director denied the Form I-485 application. The applicant filed a timely appeal from that decision on March 17, 2006.

On appeal, the applicant states that he had already explained in his rebuttal to the NOID why he did not mention his first entry prior to January 1, 1982, when he filed his Form I-589, and that he cannot submit primary evidence in support of his application because each time he entered the United States was without inspection. In support of the appeal, the applicant submits photographs and an affidavit from [REDACTED] dated March 15, 2006, stating that the applicant had resided in the United States since September 1981. The photographs do not identify either the date they were taken or their exact location, and offer no evidence whatsoever that the applicant was in the United States before 1982. The affidavit from [REDACTED] does not state with any detail how the affiant first met the applicant, what his relationship with the applicant was, or how frequently and under what circumstances he saw the applicant. The affidavit is completely devoid of any details that would lend credibility to the claimed 25-year relationship and provides no basis for concluding that [REDACTED] actually had direct and personal knowledge of the events and circumstances of the applicant residence in the United States throughout the requisite time period.

There are numerous discrepancies and inconsistencies in the applicant's testimony and submissions contained in the record that have not been adequately explained. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, 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 regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved

is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

It is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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