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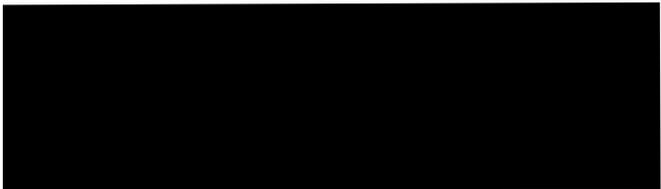
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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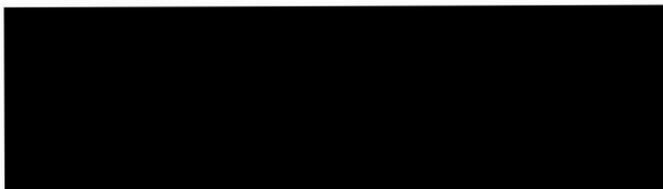
Applicant:



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 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), Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on January 20, 2006 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, counsel 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.

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.¹

The record indicates that the applicant through counsel filed a timely Form I-290B, Notice of Appeal to the Administrative Appeals Office, received on February 3, 2006 at the Los Angeles District Office. U.S. Citizenship and Immigration Services (USCIS) later rejected the appeal based on a finding that counsel had failed to complete Part 2 of the Form I-290B. However, the record indicates that counsel did properly complete Part 2 of this form. The AAO finds that the timely submitted Form I-290B was rejected by USCIS in error. This office will therefore review this properly filed, timely appeal.

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).

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).

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).

¹ 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).

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.

On or near June 7, 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 November 13, 2001, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On December 22, 2005, the director issued a notice of intent to deny (NOID) in which she indicated that she intended to deny the application for the following reasons: The applicant testified at the February 3, 2003 LIFE legalization interview that he initially entered the United States in October 1981 without inspection at San Diego by walking through a "field area". Yet, in his March 4, 1998 sworn statement which he made before a U.S. Immigration Inspector at the Houston International Airport, he testified that he entered the United States in 1981 without inspection by boat at or near Los Angeles. Finally, on the Form G-639,

Freedom of Information Privacy Act Request, the applicant stated that he entered the United States at San Ysidro, California at a land border. The director indicated that the applicant's inability to provide a consistent account of his manner and place of entry prior to January 1, 1982 called into question whether he did enter the United States prior to January 1, 1982. This in turn called into question whether he resided in the United States beginning on a date prior to January 1, 1982 and throughout the statutory period. The director found that the record indicated that it was more likely than not that the applicant did not continuously reside in the United States throughout the statutory period.

In his rebuttal, the applicant indicated through counsel that he never stated that he first entered the United States by boat at or near Los Angeles, California during 1981. He explained that he had to speak in English at the Houston International Airport in 1998 even though his native language is Punjabi. He indicated that this may have led to a miscommunication in which he told the U.S. Immigration Inspector that he entered in 1981 by boat, when he did not. The applicant also indicated that if the Form G-639 states that he first entered the United States near San Ysidro, he would attribute that to a mistake having been made when filling in that form. Counsel indicated that little weight should be given to statements made upon entry where the alien's English is limited. He also suggested that inconsistencies regarding the applicant's manner and place of entry in 1981 are not material, and he emphasized that the applicant has been consistent in his assertion that he entered the United States in October 1981.

On January 20, 2006, the director denied the application based on the reasons set forth in the NOID.

On appeal, counsel indicated that any inconsistencies in the applicant's testimony and statements regarding his manner and place of entry in October 1981 occurred because the applicant was made to speak in English instead of his native Punjabi and because the applicant was nervous when making these statements. Also, counsel emphasized that affidavits alone are sufficient to demonstrate continuous residence during the statutory period.

The applicant testified at his February 3, 2003 LIFE legalization interview that he first entered the United States without inspection in October 1981 by walking through a field area in San Diego, California. At the Houston International Airport on March 4, 1998, he testified in a sworn statement made to an U.S. Immigration Inspector that he entered the United States in 1981 by boat at or near Los Angeles, California.

Counsel's suggestion that the applicant only testified that he entered the United States by boat at or near Los Angeles because he was made to speak in English, rather than in Punjabi is not persuasive. The U.S. Immigration Inspector asked the applicant, "How and where did you enter the United States in 1981?" In response to this open-ended question, the applicant stated the following, "I entered illegally by boat somewhere in or near the Los Angeles Area." Thus, the U.S. Immigration Inspector did not elicit the city of Los Angeles or a boat as the place and manner of entry in a leading manner. Rather, the applicant spontaneously, volunteered these specific facts. The U.S. Immigration Inspector then read the entire sworn statement back to the applicant to give him the opportunity to correct any errors in his statement. At that time, the applicant initialed each page as being his accurate sworn testimony, and then signed the final page to attest to the accuracy of the entire sworn statement. The U.S. Immigration Inspector and a witness who was present for the completion and signing of the statement also signed the document.

The applicant's inability to provide a consistent account of his manner and place of entry in 1981 casts doubt on his assertion that he entered the United States in 1981. This then casts doubt on his assertion that he resided continuously in the United States from a date prior to January 1, 1982 and through May 4, 1988.

The discrepancies in the applicant's testimony cast doubt on the authenticity of all the applicant's claims and on all the evidence of record.

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 affidavits in the record which purport 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 inconsistencies 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 an Immigration Judge ordered the applicant removed in *absentia* on February 18, 1999. The applicant filed a second Form I-687 on January 9, 2006. With that filing, the applicant is seeking to be admitted to the United States as a lawful temporary resident. According to that Form I-687, signed by the applicant under penalty of perjury on December 31, 2005, at page 4, part 32, during October 2002, the applicant departed the United States. As such, he departed the United States while the February 18, 1999 order of removal was outstanding.

Section 212(a)(9)(A)(ii) of the Act, regarding aliens who have been previously ordered removed, provides in pertinent part:

Any alien not described in clause (i) [which refers to arriving aliens who are removed upon arrival or removed subsequent to proceedings initiated upon arrival] who . . .

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure . . . is inadmissible.

Thus, the applicant is inadmissible under sections 212(a)(9)(A)(ii) 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).²

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.

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

² The applicant applied for a waiver of the grounds of inadmissibility which apply to him. USCIS denied his request for a waiver and this office dismissed his appeal of the denial of that request.